

**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. 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 Handbook also addresses subsequent requirements after the J-1 waiver is approved. This related Handbook serves as a supplement to Department of Veterans Affairs (VA) Handbook 5005, Part II, Appendix J, "Requests for Approval to Petition the DOS for Support of a Waiver of the 2-year Home Residence Requirement of the United States Exchange Visitor Program."

2. SUMMARY OF MAJOR CHANGES. This VHA Handbook:

- a. Specifies updated DOS application requirements and procedures.
- b. Requires expanded recruitment efforts and specific documentation of each of these efforts.
- c. Rescinds the requirement to submit certain credentialing and privileging information.
- d. Contains guidance related to new procedures for filing petitions for H-1B non-immigrant visas.
- e. Contains expanded guidance regarding the use of private counsel.
- f. Provides updated information and instructions on actions required after waivers are approved.
- g. Updates terminology, citations, and internet resources.
- h. Expands the process for withdrawing sponsorship and VA obligation in the event of employment termination.
- i. Describes the resources for determining prevailing wage.
- j. Revises the Appendix and submission requirements for waiver requests to the Workforce Management and Consulting Office (10A2A) in VHA Central Office.
- k. Reinforces the requirement that non-immigrant visa extensions and changes to Permanent Resident Alien status can only be initiated after recruitment efforts are repeated.

l. Provides that waiver request will not be considered if there are similarly qualified “nonimmigrant” applicants who are immediately available for appointment.

m. Clarifies the circumstances under which an exchange visitor who adjusts from J-1 Visa status to H-1B Visa after receiving a J-1 waiver is not subject to the annual numerical limitations (also known as a “cap,” used in this update, refers to the annual numerical limitations set by Congress on certain non-immigrant visa classifications such as the H-1B).

3. RELATED ISSUE. VA Handbook 5005, Part II, Appendix J.

4. RESPONSIBLE OFFICE. The Workforce Management and Consulting Office (10A2A) in VHA Central Office is responsible for the contents of this Handbook. Questions may be directed to (202) 461-7179.

5. RESCISSIONS. VHA Handbook 5005.1, dated January 26, 2005, is rescinded.

6. RECERTIFICATION. This VHA Handbook is scheduled for recertification on or before the last working day of February 2016.

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Under Secretary for Health

DISTRIBUTION: E-mailed to the VHA Publications Distribution List 3/2/2011

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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

1. PURPOSE

This Veterans Health Administration (VHA) Handbook establishes criteria for requesting the approval of the Under Secretary for Health, or designee, to petition the United States (U.S.) 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. This Handbook also establishes and describes criteria for subsequent employment once the J-1 waiver is approved.

2. BACKGROUND

a. The Immigration and Nationality Act requires that certain foreign nationals, who are in the 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 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 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 VHA, the Secretary of VA 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. In VHA, this authority is used primarily to recruit physicians.

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

3. DEFINITIONS

a. **Department of State (DOS).** DOS is the Federal department that administers the Exchange Visitor Program and recommends to USCIS that they approve or disapprove 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: <https://travel.state.gov/content/visas/en.html>. This site directs the alien to the first steps in this process, including obtaining a waiver case number that is required prior to submission of a waiver request to VA Central Office.

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 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 (22 CFR, §§ 62.20-62.32 categories of J-1 exchange visitors).

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. **U.S. Citizenship and Immigration Services (USCIS).** 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: <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.** *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.** This allows temporary admission of foreign professionals seeking to work in the U.S. The H-1B Visa 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. *NOTE: See Immigration and Nationality Act (INA) 214 (g)(4); Title 8 United States Code (U.S.C.) 1184.* 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-1B until they have either fulfilled the 2-year home residency requirement or they have been granted a waiver of this requirement. *NOTE: See INA 212(e); 8 U.S.C. 1182(e).*

(2) **J-1, Exchange Visitor.** This 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 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 residency requirement, although they still remain subject to the 2-year home residency requirement upon completion of their stay on the O-1 Visa. 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. **NOTE:** See *Non-Citizen Toolbox on the VHA Human Resources (HR) Resource Center for O-1 requirements and evidence of extraordinary ability.*

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

i. **2-Year Home Residency Requirement.** Without a waiver, Exchange Visitors must return to their country of nationality, or to their last legal permanent residence, for 2 years after they have completed their education before they can apply for an immigrant visa or certain nonimmigrant visas.

j. **Labor Condition Application (LCA).** An LCA must be filed with the DOL attesting that VA will pay the required wage for the duties of the position described. The required wage is the greater of the actual wage paid to all other individuals with similar experience or the DOL prevailing wage for the occupational classification in the area of intended employment whichever is higher. Changes in the position (e.g., 8ths, location, significant change in duties) necessitate a new LCA. This may also necessitate renewed recruitment. If the condition of the position changes, this requirement for amendment may also apply to the I-129 petition. On an LCA, the facility also makes certifications regarding working conditions (20 CFR 655.732), strikes and lockouts (20 CFR 655.733), and notice (20 CFR 655.734).

k. **DOL Prevailing Wage.** The prevailing wage is a wage rate for the occupational classification in the area of intended employment as of the time of the filing of the LCA.

l. **Actual Wage.** The actual wage is the market and base pay rate paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question. In determining the wage amount, the following factors may be considered: experience, qualifications, education, job responsibility and function, specialized knowledge, and other legitimate business factors.

m. **Required Wage.** The required wage is the greater of the actual wage paid to all other individuals with similar experience or the DOL prevailing wage for the occupational classification in the area of intended employment whichever is higher. VA must pay the required wage to meet labor condition application requirements.

4. WAIVER REQUIREMENTS

a. **General Requirements**

(1) General VHA requirements for a waiver of the home residency requirement for physicians providing patient care include a 3-year employment commitment and evidence that the facility has engaged in a comprehensive recruitment effort and has given genuine consideration to all citizen, permanent resident, and non-immigrant applicants. The J-1 waiver process is considered the last available option when no other citizen or employable non-citizen candidates (e.g., permanent resident, H-1B, O-1) are available after robust recruitment. Waiver requests are approved only when a comprehensive recruitment effort has failed to produce a minimally qualified citizen or permanent resident candidate for a critical position.

(2) Recruitment efforts must meet the requirements in Appendix C. Additionally, recruitment efforts may not be more than 6 months old at the time of submission of the waiver request to the VA Health Resource Center (HRC), Topeka, Kansas.

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

(4) All U.S. citizens and permanent residents who submit an application in response to recruitment efforts, or are referred from Healthcare Retention and Recruitment Office (HRRO), 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 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 permanent resident is eliminated from consideration (see App. A).

(5) 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 is 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.

(a) Waiver requests for joint appointments must meet all of the requirements in this Handbook. The affiliated institution must also file a concurrent H-1B petition for the 8ths to be performed at that affiliate. When joint recruitment is undertaken, applications must be initially directed to the Human Resources Management office servicing the VHA 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 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 faculty appointment criteria and how the Exchange Visitor meets such requirements.

(6) 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. *NOTE: Faculty appointment status may be necessary for certain trainee supervision components of the position.*

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

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

(2) There are qualified U.S. 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., they do not meet the minimum 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) There are similarly qualified non-immigrant applicants who are immediately available for appointment.

(4) 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 J-1 Visa has been expired for more than 30 days at the time the facility's request is received at the HRC.

(5) The Exchange Visitor is not available for employment for 6 months from 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 does not commence within 6 months of receipt of the waiver request, the facility is expected to continue to recruit for qualified citizens, permanent residents, and non-immigrant immediately available for employment. 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.

(6) The waiver is 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.

(7) The waiver is for employment that is less than full-time with no affiliate time, or for full-time employment that is less than 5/8ths time in VHA.

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

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

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

(11) The waiver is based solely upon the needs of the affiliated university.

(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 percent of the time in patient care duties. For purposes of this Handbook, 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 aliens who are working for other employers on O-1 Visas. Facilities have local authority to apply directly to USCIS for an O-1 Visa by filing USCIS Form I-129.

(2) J-1 aliens who meet the criteria for an O-1 Visa may adjust to O-1 status without fulfilling the DOS Exchange Visitor 2-year home residence requirement. They may be hired by VHA 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 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 annually. 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 an annual basis; this can be accomplished by adjusting the alien’s status from O-1 to H-1B. If a facility has engaged in a comprehensive recruitment effort and they have not been able to recruit a qualified citizen or permanent resident, the 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 to ensure compliance with the provisions of this Handbook, 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 at: <https://travel.state.gov/content/visas/en.html>

(2) The completed data sheet, two self-addressed, stamped, legal-size envelopes and a check or money order (amount as noted in preceding web site), payable to the DOS are to be sent to one of the following addresses, as appropriate:

By Postal Service	By Courier Service
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. DOS 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 are 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. ***NOTE:** Refer to the list of required items and format required in Appendix A, VA Central Office J-1 Visa Waiver Request List and the Network Review and Certification of Facility Waiver Request in Appendix B.*

(2) Copies of material submitted with their request are to be returned with the request.

(3) Approved requests are forwarded directly to DOS by the Workforce Management and Consulting Office (10A2A) in VHA Central Office. ***NOTE:** All DOS mail is electronically*

scanned upon receipt. Due to this requirement, all waiver requests must be free of 2-sided documents, staples, clips, binders, prong fasteners, small odd-size paper or cards, tabs, and index sheets and cards. Only 8-1/2" by 11" paper is to be used. DOS returns waiver packages that are not "scan ready" to the originating facility.

(4) Documentation of all comprehensive recruitment efforts must meet the requirements of Appendix C.

(a) Recruitment Efforts. Recruitment efforts cannot be more than 6 months old prior to submission of request (see App. A for format to send evidence of recruitment). The primary focus of the ads must be for VHA employment; the ads must indicate that VHA is an equal opportunity employer and must contain any special requirements of the position (e.g., special professional skills and/or technical expertise, board certification, etc.). Ads must also contain text to the effect that physicians will be paid commensurate with experience, using VA's market-based physician pay system. 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 advertisement. Applications are to be directed to the appropriate VHA facility servicing HRM office; they are not to be forwarded directly to the affiliated university. **NOTE:** *The affiliate may be involved in the application review only after VA processing. Any inquiries from potential applicants concerning the position are to be documented by a report of contact, a copy of which must be kept by the contacted VA official.*

(b) Interested Individuals (other than the Exchange Visitor for whom the waiver is requested and other applicants on J-1 Visas). Each individual filing an application, expressing interest in the position, requesting information about the position, or referred by the facility HRRO, must 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 HRRO, etc.).
4. Citizenship status. **NOTE:** *For non-citizens, provide immigration status (permanent resident, H-1B, O-1, etc.).*
5. If the position was offered.
6. Copies of reports of contact discussing the position with all citizens, permanent residents, and workers holding non-immigrant visas with other employers who have applied for the position.
7. A narrative explanation as to why each citizen, or permanent resident applicant was not qualified, and, therefore, not selected, or were declined further consideration. Additional narrative explanations as to why other non-immigrant visa holders that do not require a waiver

are less qualified than the candidate for which a J-1 waiver is requested.

(c) 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 medical school must be accounted for, where appropriate. The Chief of Staff (COS) must make appropriate certifications in Section III. The employment application must be signed and dated by the applicant.

2. Curriculum Vitae

(d) 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 does 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.*

(e) Entry and Departure Records. Provide photocopies of any USCIS Form 1-94, Arrival Departure Record (front and back).

(f) 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 D.*

(g) DOS Required Documentation. Provide originals of the following DOS required documentation:

1. DOS Explanation for Periods outside U.S. while in J-1 Status;
2. DOS 18 U.S.C. 1001 Statement; and
3. DOS Personal Statement.

(h) Exchange Visitor's Address. Provide an address, email address, and telephone number where the Exchange Visitor can be reached while the waiver request is in process.

(i) License. Documentation of a current full, unrestricted license to practice medicine in State or Territory of the U.S.

(j) Results of Searches. 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 or Entities (LEIE) and the National Practitioner Data Bank (NPDB) Healthcare Integrity and Protection Data Bank (HIPDB).

(k) Copies of Certificate Examination Scores. 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 VISN 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. B), and submit it with the waiver request to:

Workforce Management-HR
3401 SW 21st Street, Bldg. 9
B22 R107-03
Topeka, KS 66604

(2) VISN Directors may request that the Under Secretary for Health 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. A similar statement needs to be included in the Director's letter.

(3) Requests approved by VISN Directors are to be submitted through the HRC to the Workforce Management and Consulting Office (10A2A) in VHA Central Office. The HRC performs initial reviews of the requests for compliance with rules, regulations, and submission requirements. 10A2A 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 TAKEN AFTER REQUESTS ARE APPROVED BY THE 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:

- a. 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.)
- b. Request that the Exchange Visitor to keep the facility advised of any changes in their address or telephone number.
- c. 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 is then 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.

7. 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.

a. **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 USCIS for final adjudication. DOS provides a copy of their recommendation to the alien, to the requesting facility, and to VHA Central Office Workforce Management and Consulting Office.

b. **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 and the petitioner by letter that the waiver has been granted.

8. ACTION REQUIRED PRIOR TO APPOINTMENT

a. A waiver of the 2-year home residency requirement does not give the alien the authorization to accept employment. Final approval of an appropriate employment 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 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. It is VHA policy to use the H-1B Visa for the initial appointment of aliens 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 alien returns to his country of origin before approval of the J-1 waiver, the alien is then subject to the H-1B cap.

c. To obtain an H-1B Visa, facilities must first file a LCA with the DOL, using the DOL's iCert process. Each facility must create a customer account for the use of the iCert program. **NOTE:** *Regulations regarding the LCA process are contained in 20 CFR, Section 655.730. DOL's iCert portal can be found at <http://icert.doleta.gov/>. VHA facilities may not create an iCert account for use by a private attorney. It is the responsibility of the VHA facility as the Petitioner to submit this directly to DOL. As part of this process, the facility Director must certify that the alien will be paid the required wage for their position. If the Facility Director cannot certify the required wage, the facility may not file an H-1B Visa petition. **NOTE:** *See current VHA policy for guidance on determining the prevailing wage in the labor condition application process.**

d. Facilities must advise H-1B candidates not to travel outside the U.S. while awaiting visa approval. 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 1-129 must be accompanied by a single check or money order covering the total filing fee. **NOTE:** *Forms, instructions, and fees are available at: www.uscis.gov. Select the immigration forms link from the home page of this Web site.*

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

9. REPRESENTATION BY PRIVATE ATTORNEYS

a. 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.

b. 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. 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 iCert process).

c. VA facilities may not enter into any retainer agreement with a non-VA attorney or outside law firm unless the Office of VA General Counsel approves such an arrangement. Per statute and regulations, the VA General Counsel solely provides all legal services to VA (see 38 U.S.C. 311 and 38 CFR 14 500, et seq). Since the General Counsel is responsible to VA for all interpretive 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.

10. FAILURE TO FULFILL OBLIGATIONS

a. 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:

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

(2) Maintain a copy of any tracking or notification documents, and

(3) 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.

- a. The letter needs to request withdrawal of VA sponsorship.
- b. Also, notify DOL, at 1-866-487-2365, of this withdrawal of VA sponsorship.

(4) An information copy of such USCIS notification is to be forwarded to the VHA Central Office (see App. E for Sample Letters).

11. TERMINATING EMPLOYMENT OF A FOREIGN NATIONAL ON AN H-1B VISA

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

b. The 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.

c. The facility is obligated to continue to pay the alien's salary until notification of termination to USCIS and DOL has been accomplished. The facility is liable for the reasonable costs of physically returning the H-1B employee to their last country of residence. This does not extend to the cost of relocating family members or property.

J-1 VISA WAIVER REQUEST LIST

1. ASSEMBLING J-1 VISA WAIVER REQUEST. This list is to be used by facilities when assembling J-1 Visa waiver requests to ensure that all requirements within Department of Veterans Affairs (VA) Handbook 5005, Part II, Appendix J, are met. There are additional requirements included here that have been established, (e.g., Department of State (DOS) waiver request review case requirements), and by Veterans Health Administration (VHA), (e.g., National Practitioner Data Bank (NPDB) Healthcare Integrity & Protection Data Bank Report (HIPDB), etc). **Packets submitted with any missing items or information may be returned and/or will delay the processing of the J-1 waiver request.**

2. REQUIRED ITEMS. The following items are required to be submitted to HRC in the following order. Remove all staples, tabs, paperclips, binders or prongs. Do not use 2-sided documents and do not send in 3-ring or any other type of binder. Do not use small or odd-sized paper and/or cards, tabs, or index sheets, or cards. Use only 8.5 x 11 inch paper. The DOS will return packets with documents that are not “scan-ready” to the originating facility. Identify every page with the alien’s J-1 DOS case number on the bottom right corner of every page.

a. **Network Review and Certification of Facility Waiver Request.** (VA-Form 10-0422b, Appendix B).

b. **Director’s Request (VA Memorandum).** (see the Staffing Toolbox for Employment of Non-citizens, for examples) The following 5 elements must be included in the Director’s request.

(1) The first paragraph must include the facility name and number, 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. The following statement must be included: “If this waiver is approved, we anticipate obtaining an H-1B Visa for the candidate.”

(2) The proposed appointment date. For joint appointments, the proportion of time for each institution must be stated (i.e., 5/8ths VA, 3/8ths medical school).

(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 (at least 51 percent patient care duties), but may include research studies of benefit to Veterans or specific teaching and training assignments. 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 adversely 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 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 Veterans Service Network (VISN), Health Resource Center (HRC), VHA Central Office, DOS or USCIS.

c. **Copy of Waiver Letter from DOS (with Case #)**. The alien must submit a Waiver Review Application Data Sheet to get a Case # from the DOS Application Data Sheet is available via the Internet at: <https://travel.state.gov/content/visas/en.html>.

d. **Current Visa Information**

(1) Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status. This was formerly the IAP-66, same title. Provide all copies issued to the Exchange Visitor while they were in the U.S on a J-1 Visa.

(2) Copy of Visa (similar in appearance to a passport document).

(3) I-94 Arrival and Departure Card.

(4) DOS Explanation for periods outside U.S. while in J-1 status – signed and dated.

(5) DOS 3-Year Employment Agreement (Exchange Visitor Certification) – signed and dated.

(6) DOS 18 United States Code (U.S.C.) 1001 Statement – signed and dated.

(7) DOS Waiting Period Information – exchange visitor's address and contact information.

(8) DOS Personal Statement – signed and dated.

e. **Other Information Required**

(1) National Practitioner Data Bank (NPDB) Report or Healthcare Integrity & Protection Data Bank (HIPDB) Report – obtain this from local Credentialing Office.

(2) Health Human Services (HHS) Data Bank/Office of the Inspector General (OIG) & List of Excluded Individuals/ Entities Search (LEIE) Report – go to <http://exclusions.oig.hhs.gov> to run report on alien.

(3) Application (VAF 10-2850), Section III – requires Chief of Staff (COS) signature and include a page following this that includes any gaps in the dates of training.

(4) Current Licensure (medical license, board certification, Drug Enforcement Agency, etc) **and** Form 5-4682 - go to www.docboard.org to verify each license

(5) Curriculum Vitae (CV).

(6) Educational Commission on Foreign Medical Graduates (ECFMG).

(7) United States Medical Licensing Examination (USMLE) Score Reports, Steps 1, 2, & 3, National Board Medical Examiners (NBME), or Federal Licensing Exam (FLEX).

f. **Recruitment Activity.** Evidence of recruitment activity must be submitted as follows:

(1) Hard copies of print ads from the published source indicated date and journal title.

(2) E-ads: a printed copy of the ad as posted on the professional web site, evidenced by URL or web address.

(3) Copies of ads posted in newspapers and local publications from the published source noting date and title (not a sample tear-sheet).

(4) Copies of letters to medical schools, specialty boards, and professional organizations.

(5) Printed web site posting from VACareers.

(6) Printed proof of Web postings using the Healthcare Retention and Recruitment Office (HRRO) toolkit. **NOTE:** *The facility must contact the VA point-of-contact at the contracted ad agency (i.e., HealthCareers, etc) in order to obtain a direct Web link to the posted ads.*

(7) Copy of electronic contact with HRRO Placement Assistance at: VAPlacementService@va.gov.

3. OTHER APPLICANTS. Other applicants are to:

a. **Provide a one-page Report of the Following Data:**

(1) Total Applications Received (including alien applications);

(2) Total number of U.S. Citizens Received;

(3) Total Permanent Resident Aliens (PRA) Received;

(4) Total Current Non-Immigrant (H-1B, O-1, etc.) Received;

(5) Total Citizens Interviewed;

(6) Total PRAs Interviewed;

- (7) Total Non-Immigrant Interviewed;
- (8) Total Citizens Declined;
- (9) Total PRA Declined;
- (10) Total Non-Immigrant Declined;
- (11) Total Citizens Non-Selected;
- (12) Total PRA Non-Selected;
- (13) Total Non-Immigrant Non-Selected;


(14) Include individual Reports of Contact for each Citizen, PRA, current H-1B, or O-1 who applied for the position. Include this behind the one-page data report, with respective CVs and applications for each candidate. Each report of contact must include the candidate's name, current address, telephone number and citizenship status. The Report of Contact requires that the following four items be addressed:

- 1. Detailed information regarding qualifications;
- 2. Narrative explanation as to why the individual was not qualified;
- 3. Whether or not the position was offered and the result of that offer;
- 4. Date of contact and nature of contact.

b. Local facility Information Required:

- (1) Name;
- (2) Title;
- (3) Contact phone;
- (4) Contact email; and
- (5) Fax number.

NOTE: All interested applicants must be contacted and qualifications discussed in a telephone interview.

 Department of Veterans Affairs		NETWORK REVIEW AND CERTIFICATION OF FACILITY WAIVER REQUEST	
SECTION A: Waiver Information			
FACILITY			
EXCHANGE VISITOR NAME			
MEDICAL SPECIALTY			
SECTION B: Clinical Manager Certification			
<p>I have reviewed this waiver request and certify that the following requirements have been met (all items must be checked):</p> <ul style="list-style-type: none"> <input type="checkbox"/> The position for which the waiver is sought is critical to the facility's mission. <input type="checkbox"/> Failure to obtain the Exchange Visitor's services would necessitate discontinuance of an important facility program or a major phase of the program <input type="checkbox"/> The facility undertook a comprehensive recruitment effort to fill this position. <input type="checkbox"/> 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			
<p>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.</p>			
SIGNATURE		DATE	
ADDITIONAL COMMENTS			

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 U.S. citizens are found qualified, Permanent Resident Aliens (PRAs) must then be considered, followed by any workers who currently hold a non-immigrant employment visa with another employer.

1. MANDATORY RECRUITMENT STEPS

- a. Announcements must be posted for 30 days at: <http://www.vacareers.va.gov>
- b. Utilize the Healthcare Retention and Recruitment Office (HRRO) Toolkit to request posting on CareerBuilder and HealthECareers (Toolkit user account must be established).
- c. Contact HRRO for Recruitment Placement assistance and potential lists of candidates at: VAPlacementService@va.gov.
- d. Place an electronic ad for 30 days on: <http://careermd.com/>.

2. SELECT AT LEAST 2 OF THE FOLLOWING ADDITIONAL RECRUITMENT STEPS


- a. Post the position on www.craigslist.org on the link to “post to classifieds” for your city and/or state.
- b. Utilize the Journal of the American Medical Association electronic posting resources at <http://jama.ama-assn.org/>
- c. Utilize the New England Journal of Medicine Career Center at: www.nejmjobs.org.
- d. Utilize the Association of American Medical Colleges job board at: <http://www.aamc.org/careerconnect/>
- e. Electronically post directly to a professional association web site or professional journal web site posting page in a specialty related to the position for which the facility is recruiting.
- f. Utilize a physician recruitment firm. This may require assistance from Contracting or Acquisition in order to develop a contractual arrangement.

3. OTHER MARKETING AND PUBLICITY POSSIBILITIES

a. Instruct the appropriate Clinical Service Chief for that specialty to contact colleagues at Medical Schools or through specialty/sub-specialty societies and alert them that there are positions available. Document these contacts.

b. Work with the Public Affairs Office to develop a press release for a positive story about VA employees and Federal employment.

EXCHANGE VISITOR CERTIFICATION

 Department of Veterans Affairs	EXCHANGE VISITOR CERTIFICATION
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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

VA FORM **10-0422a**
AUG 2004

SAMPLE LETTERS TO USCIS

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 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