

Alien Physicians and Their Admission into the United States

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In 1976, Congress restricted the entry of alien physicians into the United States on the belief that they provide inferior medical services and that foreign nations desperately need them. Congress amended the Immigration and Nationality Act to require alien physicians, in many cases, to pass both medical and English competence examinations and to obtain individual labor certifications. This article surveys these new requirements and discusses various means by which alien physicians may still come to the United States without passing these examinations. The article also notes two special problems encountered by J-1 Exchange-Visitor physicians: the two-year foreign residence requirement and limitations on stay.

INTRODUCTION

In 1976, Congress enacted legislation that drastically restricts the eligibility of alien physicians¹ to enter the United States ei-

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1. The authors prefer to use the term "alien physicians" instead of the more

ther principally to perform services as members of the medical profession or to receive graduate medical education or training. This legislation, the Health Professions Educational Assistance Act of 1976 (Public Law 94-484),² included several amendments to the Immigration and Nationality Act³ relating to the eligibility of foreign medical graduates to receive immigrant and non-immigrant visas. Moreover, because Congress found that physicians and surgeons are no longer in short supply in the United States,⁴ it removed physicians and surgeons from the Schedule A precertified labor certification list of the Department of Labor's Employment and Training Administration.⁵ Therefore, alien physicians must now seek labor certification(s) on a case-by-case basis, based upon individual job offers.

The Senate floor debate⁶ on Public Law 94-484 reveals that a number of Senators considered excessive reliance upon physicians who were "graduates of foreign medical schools" to be a major health manpower problem facing our nation.⁷ Senator Kennedy noted that the number of foreign medical graduates entering the United States has increased markedly in the last fifteen years. In support of his point, Kennedy noted that in 1959 foreign medical graduates comprised less than six percent of all physicians in this country.⁸ In 1974, some 76,504 licensed doctors—one-fifth of all physicians in the United States—were graduates of foreign medical schools.⁹ Approximately one-third of all physicians in graduate training programs in 1974 were foreign medical graduates, and more than fifty percent of newly licensed physicians had been trained abroad.¹⁰

frequently used but misleading term "foreign medical graduates." Foreign medical graduates include a large population of physicians who are not affected by the immigration laws because they are citizens, or permanent resident aliens, who have obtained their medical degrees abroad.

2. Pub. L. No. 94-484, 90 Stat. 2243.

3. 8 U.S.C.A. §§ 1101-1153 (West 1970 & Supp. 1978) [the Immigration and Nationality Act is hereinafter cited as I. & N. Act].

4. Included in the congressional findings and declaration of policy in § 2(c) of Public Law 94-484 is the statement that "[t]he Congress further finds and declares that there is no longer an insufficient number of physicians and surgeons in the United States such that there is no further need for affording preference to alien physicians and surgeons in admission to the United States under the Immigration and Nationality Act." Health Professions Educational Assistance Act of 1976, Pub. L. No. 94-484, § 2(c), 90 Stat. 2243.

5. See notes 38-42 and accompanying text *infra*.

6. The Senate version of Public Law 94-484 was S. 3239, 94th Cong., 2d Sess., 122 CONG. REC. S11,251 (daily ed. July 1, 1976).

7. 122 CONG. REC. S11,251-53, S11,258, S11,260-61 (daily ed. July 1, 1976).

8. *Id.* at S11,258 (remarks of Sen. Kennedy).

9. *Id.*

10. *Id.*

The Senate Labor and Public Welfare Committee found two basic problems in this trend: concern for the quality of care provided by foreign graduates and the foreign policy issue created by encouraging emigration of medical doctors from nations that desperately need them.¹¹ With respect to the quality of care, Senator Beall of Maryland reported a widespread belief that alien physicians generally are inferior to United States graduates.¹² He quoted the American Association of Medical Schools in support of this conclusion.¹³ Beall also noted that many alien physicians have difficulty with the English language, to the possible detriment of their patients.¹⁴

With respect to the foreign policy problem, Senator Kennedy noted that the United States was receiving nearly one-fourth of the free world's alien physicians.¹⁵ He considered it desirable that the practice cease because some foreign nations were opposing emigration of their physicians and because the administration had testified that further enrollment increases in United States graduate medical training programs were unnecessary to maintain an adequate number of physicians in the country.¹⁶ "Even beyond the pragmatic issues of need and foreign relations," said Senator Kennedy, "there is a moral implication associated with importing inexpensive manpower from developing countries which have serious health care problems and manpower shortages."¹⁷ Senator Beall noted

that, first, there are more Thai-trained physicians in New York than are providing care to Thailand's 28 million rural population; second, South Korea, which has only one physician per 13,000 citizens recently has been losing 10 percent of its physicians annually to the United States; and third, approximately one-sixth of the medical graduates of Iran come to the United States annually.¹⁸

11. *Id.*

12. *Id.* at S11,253 (remarks of Sen. Beall).

13.

FMG's undermine the process of quality medical education in this country and ultimately pose a threat to the quality of care delivered to the people. . . . The FMG scores lower and has higher failure rate on objective type examinations. It is generally acknowledged, although not proven, that the medical care rendered by some FMG's is a poorer quality.

Id.

14. *Id.*

15. *Id.* at S11,258 (remarks of Sen. Kennedy).

16. *Id.*

17. *Id.*

18. *Id.* at S11,253 (remarks of Sen. Beall).

In essence, said Senator Beall, this was an immigration problem best solved not through national licensing and residence regulation but rather by an amendment to the immigration laws.¹⁹ Public Law 94-484 was designed to meet these concerns.

However, the October, 1976, passage of Public Law 94-484 caused considerable problems for many metropolitan hospitals with large alien physician staffs.²⁰ Because the law was to go into effect on January 10, 1977, these hospitals feared that they would lose large percentages of their staffs during 1977.²¹ These hospitals complained to congressional representatives that their medical services would be severely disrupted by a shortage of medical personnel.²²

Congressional leaders may also have realized that alien physicians would not have an opportunity to take and pass the required Visa Qualifying Examination (VQE)²³ until September, 1977, and that it was therefore unreasonable to expect alien physicians whose residencies were to begin July 1, 1977, to have passed an examination that was not given until several months later. To resolve this dilemma, Congress included a waiver provision in the Health Services Extension Act of 1977 (Public Law 95-83),²⁴ which changed the effective date of parts of Public Law 94-484 to January 10, 1978. Consequently, new exchange visitors need not have passed the VQE until January 10, 1978.

These two pieces of legislation, both amending the Act and going into effect in the same year, have caused both laymen and attorneys a considerable amount of confusion concerning the eligibility of alien physicians to come to the United States as either immigrants or non-immigrants or to change status once here. The purpose of this article is to clear up some of this confusion.

THE EXAMINATION REQUIREMENTS

The Act, as amended by Public Laws 94-484 and 95-83, provides that alien graduates of unaccredited medical schools²⁵ who seek admission into the United States principally to perform services

19. *Id.*

20. N.Y. Times, Jan. 6, 1977, at 49, col. 4.

21. N.Y. Times, Jan. 7, 1977, § B, at 12, col. 2.

22. RESIDENT & STAFF PHYSICIAN, December, 1977, at 25.

23. For a discussion of the VQE, see notes 29-31 and accompanying text *infra*.

24. Pub. L. No. 95-83, § 307(q)(3), 91 Stat. 387.

25. Public Law 95-83 provides that alien graduates of medical schools accredited by a body or bodies approved for that purpose by the Commissioner of Education (regardless of whether a school is in the United States) are exempt from the VQE requirement. Health Services Extension Act of 1977, Pub. L. No. 95-83, § 307(q)(1), 91 Stat. 387.

as members of the medical profession must, unless exempt, take and pass parts I and II of the National Board of Medical Examiners (NBME) Examination or an equivalent examination as determined by the Secretary of Health, Education and Welfare (HEW). Alien graduates of unaccredited medical schools must also be competent in oral and written English.²⁶ The same requirement applies to alien physicians who, on or after January 10, 1978, wish to come to the United States on exchange visitor (J-1) visas to receive graduate medical education or training.²⁷ However, under certain circumstances a waiver of this requirement is available to J-1's until December 31, 1980.²⁸

Medical Competence Examinations

The Secretary of HEW has determined the VQE to be equivalent to the NBME examination.²⁹ The NBME and the Edu-

26. The amended Act provides that:

- (a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

- (32) Aliens who are graduates of a medical school not accredited by a body or bodies approved for the purpose by the Commissioner of Education (regardless of whether such school of medicine is in the United States) and are coming to the United States principally to perform services as members of the medical profession, except such aliens who have passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health, Education and Welfare) and who are competent in oral and written English. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section 1153(a)(3) and (6) and to non-preference immigrant aliens described in section 1153(a)(8) of this title.

I. & N. Act § 212(a)(32), 8 U.S.C.A. § 1182(a)(32) (West Supp. 1978).

A little-known Immigration and Naturalization Service (INS) regulation, which became effective January 19, 1978, prevents the INS from even *approving a petition* for third or sixth preference classification unless the petitioner fulfils the requirements of the new § 212(a)(32). 8 C.F.R. § 204.2(e)(2) (1978).

27. I. & N. Act § 212(j)(1)(B), 8 U.S.C.A. § 1182(j)(1)(B) (West 1970 & Supp. 1978).

28. See notes 98-111 and accompanying text *infra*.

29. A special two-day examination, developed and offered by the NBME, is equivalent to parts I and II of the NBME examination. The examination has become known as the Visa Qualifying Examination. Memorandum by Dr. Ray L. Casterline, Executive Director of the Educational Commission for Foreign Medical Graduates (ECFMG) (Aug. 17, 1977).

The NBME has made a policy decision that graduates of medical schools located outside the United States (including Puerto Rico) and Canada (except for graduates of the American University Medical School in Beirut, Lebanon) are not eligi-

cational Commission for Foreign Medical Graduates (ECFMG)³⁰ are cooperating in the administration of the VQE.³¹ The next annual VQE will be given in early September, 1979.

English Competence Examinations

In order to be eligible for admission to the VQE, alien physicians must meet the English competence requirement not more than two years prior to the deadline for receipt of applications to take the VQE.³² ECFMG gives English tests each January and July.³³ The only alternative English proficiency test that ECFMG will accept is the Test of English as a Foreign Language (TOEFL), which frequently is given in many centers throughout the world.³⁴ However, the ECFMG cannot evaluate an alien physician's performance on TOEFL unless the alien physician has previously taken an ECFMG English test because the ECFMG English test score is used as the standard by which an alien physician's performance on TOEFL is evaluated.³⁵ TOEFL must be taken at a regularly scheduled international administration (February, April, June, September, or December).³⁶

THE LABOR CERTIFICATION REQUIREMENT

An alien seeking to immigrate into the United States for the purpose of performing skilled or unskilled labor under the third, sixth, or non-preference categories is statutorily ineligible to receive a visa and is excludible from admission into the United States unless he obtains a labor certification.³⁷

From 1966 until February 17, 1977, alien physicians and surgeons were eligible to receive labor certifications under the

ble to take parts I and II of the NBME examination. *See* Information Booklet, Visa Qualifying Examination 1978, at 3 (published by the ECFMG).

30. The ECFMG is a private, nonprofit organization, established to test and evaluate foreign medical graduates to help ensure that they are qualified to participate in the care of patients in United States hospitals and to benefit from the educational opportunities that accompany such appointments. By agreement with the Department of State, the ECFMG monitors the training programs of alien physicians who participate in the Exchange-Visitor program. Letter from Dr. Frank W. McKee, Associate Director of ECFMG, to Dan P. Danilov (Oct. 3, 1977).

31. *See* Information Booklet, Visa Qualifying Examination 1978, at 3 (published by the ECFMG).

32. *Id.* at 4.

33. *Id.*

34. *Id.*

35. Telephone Interview with Dr. Frank W. McKee, Associate Director of ECFMG (Sept. 8, 1978).

36. Information Booklet, Visa Qualifying Examination 1978, at 4 (published by the ECFMG).

37. I. & N. Act § 212(a)(14), 8 U.S.C. § 1182(a)(14) (1976).

United States Department of Labor's Schedule A precertification list.³⁸ Schedule A is a listing of occupations deemed to be in short supply nationwide. In section 2(c) of Public Law 94-484, Congress made a specific finding and declaration that there is no longer a shortage of physicians and surgeons in the United States and therefore "no further need for affording preference to alien physicians and surgeons in admission to the United States"³⁹ Accordingly, effective February 18, 1977, the United States Department of Labor removed "Medicine and Surgery" from its Schedule A.⁴⁰ After this date alien physicians seeking to immigrate to the United States principally to perform services as members of the medical profession under the third, sixth, or non-preference categories would need either an individual (job offer) labor certification⁴¹ or a Schedule A, Group II precertification as an alien of exceptional ability in the arts or sciences.⁴²

At a special morning conference of the American Immigration and Citizenship Conference, held in New York City on January 13, 1978, Nandor Kertai, Assistant Chief of Services, Division of Immigration, United States Department of Labor, announced that under certain conditions the Department of Labor intended to put physicians and surgeons back on the Schedule A precertification list. The condition requires a finding, based upon information provided by HEW, that there is a shortage of physicians and surgeons in a particular geographical area. Therefore, alien physicians who intend to practice in such an area would not need to obtain individual labor certifications.

On May 27, 1978, at the Annual Conference of the Association of Immigration and Nationality Lawyers, in Honolulu, Hawaii, Mr. Kertai appeared on a panel dealing with the problems of alien physicians and reiterated that the Department of Labor was considering putting physicians and surgeons back on Schedule A. He

38. See 20 C.F.R. § 656.10 (1978) (current version).

39. Health Professions Educational Assistance Act of 1976, Pub. L. No. 94-484, § 2(c), 90 Stat. 2243.

40. 20 C.F.R. § 656.10(b) (1978).

41. An individual certification under § 212(a)(14), 8 U.S.C. § 1182(a)(14) (West 1970 & Supp. 1978), of a particular employer's application for a particular alien physician is granted by a regional certifying officer of the Employment and Training Administration of the United States Department of Labor. See 20 C.F.R. § 656.21 (1978).

42. 20 C.F.R. § 656.10(b) (1978).

said that HEW will determine on a regional basis which areas have shortages of physicians and surgeons. It will then contact the equivalent regional office of the Employment and Training Administration of the Department of Labor to inform the regional certifying officer that the area qualifies to have physicians and surgeons on Schedule A.

In an effort to make the appropriate information available to the Department of Labor for use in implementing labor certifications for physicians and surgeons, Public Law 94-484 requires the Secretary of HEW to "develop sufficient data to enable the Secretary of Labor to make equitable determinations with regard to applications for labor certification by graduates of foreign medical schools."⁴³

On April 19, 1978, the Secretary of HEW issued to the Department of Labor a report entitled *Labor Certification for Foreign Medical Graduates*.⁴⁴ This report presents the information required by Public Law 94-484. Specifically, the report provides data on the number of physicians, by specialty group and by ratio to population, in specific areas of the United States. It also provides information on the distribution relative to population of physicians in each specialty group. These statistics indicate the relative adequacy of the supply of physicians in each area for any specialty group by comparison with the national distribution. Presumably this information will be used to make Schedule A determinations.

In a similar effort to implement its new immigration policy, the Department of Labor has amended its regulations to provide that if an application for alien employment certification (labor certifi-

43. Section 906 of Public Law 94-484 provides in full that:

(a) The Secretary of Health, Education, and Welfare shall (not later than one year after the date of the enactment of this Act) develop sufficient data to enable the Secretary of Labor to make equitable determinations with regard to applications for labor certification by graduates of foreign medical schools.

(b) The data required under subsection (a) shall include the number of physicians (by specialty and by percent of population) in a geographic area necessary to provide adequate medical care, including such care in hospitals, nursing homes, and other health care institutions, in such area.

(c) The Secretary of Health, Education, and Welfare shall develop such data after consultation with such medical or other associations as may be necessary.

Health Professions Educational Assistance Act of 1976, Pub. L. No. 94-484, § 906, 90 Stat. 2243.

44. BUREAU OF MANPOWER, PUBLIC HEALTH SERVICE—HEALTH RESOURCES ADMINISTRATION, U.S. DEP'T OF HEW, LABOR CERTIFICATION FOR FOREIGN MEDICAL GRADUATES (1978). For a list of health manpower shortage areas, see 43 Fed. Reg. 30,647-85 (1978).

cation) involves a job offer as a physician or surgeon, the alien must furnish documentation that he has passed parts I and II of the NBME examination or its equivalent (the VQE) before the Department will process his application.⁴⁵ Of course, if the alien is exempt from the VQE requirement,⁴⁶ he must furnish documentation showing this exemption.

In response to the new medical competence examination requirement, some alien physicians doubtless considered filing for labor certification in occupations other than those of physician or surgeon. The Department of Labor anticipated this possibility.⁴⁷ According to the Department of Labor's *Operating Instructions Handbook*, upon receipt of an application from an employer containing a job offer for an alien physician in an occupation other than that of physician, state labor department officials are to examine the application to determine whether the alien is qualified to pursue the occupation for which labor certification is sought and whether there is any evidence that the physician intends to pursue the occupation for which he seeks certification.⁴⁸ The Department of Labor considers more than one year's experience in an occupation to be evidence that the alien intends to pursue that occupation in the United States.⁴⁹ The completion of certain college-level courses supporting an appropriate degree is sufficient qualification for some occupations.⁵⁰ It is not yet known how strictly the various regional offices of the Department of Labor will adhere to the Department's operating instructions in processing applications for alien physicians' employment certifications when prospective employers indicate that they will employ the physicians in non-physician occupations.

45. 20 C.F.R. § 656.21(a)(6) (1978).

46. See text accompanying notes 51-52 & 56-62 *infra*.

47. U.S. DEP'T OF LABOR, OPERATING INSTRUCTIONS HANDBOOK, LABOR CERTIFICATION PROGRAM FOR IMMIGRANT WORKERS CHAPTER 1 (20 C.F.R. 656), at 656-A-52 to -53 (1977).

48. *Id.*

49. *Id.*

50. "Evidence of qualifications for an occupation, such as pharmacology or biochemistry, is deemed to be the completion of sufficient courses on the college level to support a degree in the subject and documentation of the alien's qualifications may be requested from the employer in such circumstances." *Id.*

EXCLUSIONS, WAIVERS, EXEMPTIONS, AND ALTERNATIVE GROUNDS
OF ADMISSION OF ALIEN PHYSICIANS WHO DO NOT TAKE
AND PASS THE VQE

The recent amendments to the Act have not entirely excluded alien physicians from admission into the United States. Some alien physicians are statutorily exempt from, or not subject to, the VQE and English competence requirements. Others obtain waivers or use other alternative methods of obtaining admission into the United States. Listed below are the categories under which an alien physician may still seek admission into the United States as an immigrant without passing the VQE or satisfying the English language competence requirements. Also listed are some of the non-immigrant classifications that can be used for this purpose. This list is not exhaustive.

Immigrant Visa Applicants

Alien Physicians Coming Principally to Perform Services as
Members of the Medical Profession

The following fifteen categories encompass those alien physicians who could immigrate to the United States principally to perform services as members of the medical profession without passing the VQE or satisfying the English competence requirement. Included are waivers, statutory exemptions, and alternative grounds as well as two categories not subject to some requirements. It should be noted that all the amendments affecting the *immigration* of alien physicians, including those enacted in Public Law 95-83, became effective January 10, 1977.

1. Newly added paragraph 41 of section 101(a) of the Act defines the term "graduates of a medical school." Not included in this definition are aliens who are of national or international renown in the field of medicine.⁵¹ Therefore, these aliens are not subject to the VQE and English competence requirements of section 212(a)(32),⁵² which applies to alien physicians. They are,

51. The amended Act provides that "[t]he term 'graduates of a medical school' means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine." I. & N. Act § 101(a)(41), 8 U.S.C.A. § 1101(a)(41) (West 1970 & Supp. 1978).

52. At the Annual Conference of the Association of Immigration and Nationality Lawyers, in Honolulu, Hawaii, on May 27, 1978 (1978 AINL Convention), Cornelius J. Scully III, Chief, Regulations and Legislation Section, Visa Office, United States Department of State, said that until formal definitive guidelines are promulgated, a doctor who meets the requirements of the Department of Labor's Schedule A, Group II (*see* 20 C.F.R. §§ 656.10(b) & 656.22(d) (1978)) as an alien of exceptional ability in the sciences or arts may be considered by American consu-

however, subject to the labor certification requirement of section 212(a)(14) if they wish to seek employment in the United States and to immigrate under the third, sixth, or non-preference categories.

2. Also not subject to the VQE and English competence requirements are alien physicians who were born in independent countries of the Western Hemisphere and who registered themselves, prior to January 1, 1977, on the Western Hemisphere immigrant visa waiting list on the basis of a relationship (such as parent of a United States citizen child) statutorily exempting them from the labor certification requirement of section 212(a)(14) of the Act as it existed prior to January 1, 1977.⁵³

3. A waiver of the VQE and English competence requirements is now available to an alien physician who (1) "properly filed" an application for adjustment of status (Form I-485) with the Immigration and Naturalization Service (INS) in the United States prior to January 10, 1977, (2) has remained in the United States since that time or left and returned with official authorization ("advance parole"), and (3) either has been granted a waiver by the INS of the two-year foreign residence requirement for exchange visitor visas or has had such a waiver recommended by his home country⁵⁴ to the Department of State prior to January 10, 1977.⁵⁵

lar posts to be a doctor of international renown. Sol Eisenstein, INS Assistant Commissioner for Adjudications, said at the same conference that the INS has no criteria, as of yet, specified by regulation for determining which physicians are of national or international renown. However, at an October 19, 1978, meeting in Washington, D.C., with a liaison committee of the Association of Immigration and Nationality Lawyers, Mr. Eisenstein said that HEW, the Visa Office of the Bureau of Consular Affairs of the State Department, and the INS currently were working on a definition of the term "national or international renown" in the field of medicine. Mr. Eisenstein stated that the standards probably will be more stringent than those used in Schedule A, Group II determinations by the Department of Labor. Mr. Eisenstein also said that he expected the new criteria to be published as proposed rules in 1978.

53. At the 1978 AINL Convention, Cornelius J. Scully III said that this requirement is based upon a Department of State ruling with which the INS has concurred. See note 52 *supra*. The rationale apparently is that Congress imposed the VQE and English competence requirements only upon those alien physicians qualifying for immigrant visas through their occupation as a physician and not through familial relationship.

54. Sam Bernsen, former INS General Counsel, announced this waiver as the INS's policy at the Annual Conference of the Association of Immigration and Nationality Lawyers held in Bermuda from May 25 through May 30, 1977.

55. The International Communication Agency is now in charge of processing

4. Aliens who are graduates of medical schools accredited by a body or bodies approved for that purpose by the United States Commissioner of Education, regardless of whether the medical schools are located within the United States, are statutorily exempt from the VQE and English competence requirements.⁵⁶ Currently, medical schools in only the United States (including Puerto Rico) and Canada are so accredited.⁵⁷ Although the American University Medical School in Beirut, Lebanon, is chartered by the Board of Regents of the State of New York, its graduates are not exempt from the requirements of Public Law 94-484.⁵⁸ However, they are exempt from the VQE requirement if they have passed parts I and II of the NBME examination.⁵⁹ They must also demonstrate competence in oral and written English.⁶⁰ Thus, although these alien physicians possibly can take a different legal route to comply with the VQE and English competence requirements, they are not exempt as are the graduates of medical schools in the United States or in Canada. The alien physician graduates of United States and Canadian medical schools and of the American University Medical School in Beirut, Lebanon, are subject to the labor certification requirement.⁶¹

5. An alien who is a medical school graduate is considered to have passed parts I and II of the NBME examination if the alien was on January 9, 1977, licensed in, specialty board certified, and practising in a state in the United States.⁶² These aliens are subject to the labor certification requirement.

and recommending these waivers to the INS. Prior to April 1, 1978, these waivers were processed by the Facilitative Services Staff of the Bureau of Educational and Cultural Affairs of the United States Department of State.

56. I. & N. Act § 212(a)(32), 8 U.S.C.A. § 1182(a)(32) (West 1970 & Supp. 1978).

57. Medical schools in Canada and in the United States (including Puerto Rico) are the only schools accredited by the Liaison Committee on Medical Education. This committee currently is the only body approved for this purpose by the United States Commissioner of Education. Memorandum by Dr. Ray L. Casterline, Executive Director of ECFMG (Aug. 17, 1977).

58. Letter from Dr. Frank McKee, Associate Director of ECFMG, to Dan P. Danilov (Aug. 18, 1978).

59. *Id.*

60. *Id.*

61. I. & N. Act § 212(a)(14), 8 U.S.C. § 1182(a)(14) (1976).

62. Public Law 95-83 provides that:

(a) For purposes of section 212(a)(32) and section 212(j)(1) of the Immigration and Nationality Act (8 U.S.C. 1182), an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners Examination if the alien—

(1) was on January 9, 1977, a doctor of medicine fully and permanently licensed to practice medicine in a State,

(2) held on that date a valid specialty certificate issued by a constituent board of the American Board of Medical Specialties, and

(3) was on that date practicing medicine in a State.

Health Services Extension Act of 1977, Pub. L. No. 95-83, § 307(q)(3), 91 Stat. 387.

6. The spouse of a United States citizen on whose behalf an I-130 relative petition has been approved could immigrate in the immediate relative category.⁶³

7. The parent of an over-twenty-one-year-old United States citizen son or daughter on whose behalf an I-130 relative petition has been approved could immigrate in the immediate relative category.⁶⁴

8. The unmarried and under-twenty-one-year-old son or daughter of a United States citizen on whose behalf an I-130 relative petition has been approved could also immigrate in the category of immediate relative.⁶⁵ This benefit applies equally to those sons and daughters who were married but whose marriages were dissolved by death, divorce, or annulment.⁶⁶

9. The unmarried son or daughter of a United States citizen on whose behalf an I-130 relative petition has been approved could immigrate in the first preference category.⁶⁷

10. The spouse of a lawful permanent resident alien on whose behalf an I-130 relative petition has been approved could immigrate in the second preference category.⁶⁸

11. The unmarried son or daughter of a lawful permanent resident alien on whose behalf an I-130 relative petition has been approved could immigrate in the second preference category.⁶⁹

12. The married son or daughter of a United States citizen on whose behalf an I-130 relative petition has been approved could immigrate in the fourth preference category.⁷⁰

13. The brother or sister of an over-twenty-one-year-old United States citizen on whose behalf an I-130 relative petition has been approved could immigrate in the fifth preference category.⁷¹

14. A documented refugee from a Communist country or from a country in the general area of the Middle East could immigrate

63. I. & N. Act § 201(b), 8 U.S.C. § 1151(b)(1976).

64. *Id.*

65. *Id.*

66. *Id.* § 101(a)(39), 8 U.S.C. § 1101(a)(39).

67. *Id.* § 203(a)(1), 8 U.S.C. § 1153(a)(1).

68. *Id.* § 203(a)(2), 8 U.S.C. § 1153(a)(2).

69. *Id.*

70. *Id.* § 203(a)(4), 8 U.S.C. § 1153(a)(4).

71. *Id.* § 203(a)(5), 8 U.S.C. § 1153(a)(5).

in the seventh preference category.⁷²

15. The alien physician spouse of an admissible alien physician who is accompanying or following to join his or her spouse is not required to meet the VQE and English competence requirements.⁷³

Alien Physicians Coming Not Principally to Perform Services as Members of the Medical Profession

Under the terms of section 212(a)(32), an alien medical school graduate not coming to the United States principally to perform services as a member of the medical profession is not subject to the VQE and English competence requirements.⁷⁴ These alien physicians might immigrate under one of the five groupings listed below. The authors wish to emphasize explicitly that the following is not merely a list of ways for alien physicians to “get around” the VQE and English competence requirements to resume the practice of medicine after obtaining immigrant status. The INS could consider such an attempt to be a type of fraud.

1. The first grouping consists of those alien physicians who wish to enter the United States as third preference immigrants in a non-physician line of work, such as a college or university professor.⁷⁵ The third preference category requires an offer of employment as well as a labor certification.⁷⁶

2. Included in the second grouping of non-medical immigrants are those alien physicians who are the beneficiaries of approved I-140 occupational petitions who would enter the United States as sixth preference immigrants in a non-physician line of work.⁷⁷ The sixth preference category requires the employer’s sponsorship as well as a labor certification.⁷⁸

72. *Id.* § 203(a)(7)(A), 8 U.S.C. § 1153(a)(7)(A).

73. *Id.* § 203(a)(9), 8 U.S.C. § 1153(a)(9).

74. At a meeting on October 19, 1978, between Sol Eisenstein, INS Assistant Commissioner for Adjudications, and a liaison committee of the Association of Immigration and Nationality Lawyers, Mr. Eisenstein stated that the determinations whether alien physicians are coming not principally to perform services as members of the medical profession are made on a case-by-case basis, occasionally upon consultation with the Department of State and with ECFMG. Mr. Eisenstein noted that although it would be difficult to state any INS guidelines, relevant factors include whether the position requires a member of the medical profession and whether the alien physician recently had been working in the field of medicine.

75. I. & N. Act § 203(a)(3), 8 U.S.C. § 1153(a)(3) (1976).

76. *Id.* §§ 203(a)(3), 212(a)(14), 8 U.S.C. §§ 1153(a)(3), 1182(a)(14).

77. *Id.* § 203(a)(6), 8 U.S.C. § 1153(a)(6).

78. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14); 8 C.F.R. § 204.2(e)(4) (1978).

3. Alien physicians who seek to enter the United States as non-preference immigrants in a non-physician line of work comprise a third grouping.⁷⁹ Some non-preference immigrants have labor certifications.⁸⁰ Others are exempt by regulation from the labor certification requirement because they are investors as outlined in the fourth grouping below and therefore do not intend to seek employment in the United States.⁸¹

4. The fourth grouping of non-physician immigrants consists of those alien physicians who would enter the United States as immigrant investors under the non-preference category.⁸² The minimal investment is \$40,000 in a business. If the investment is in a medical office, the alien physician must merely be an administrator of the practice and not provide patient care. If the physician-investor is coming to the United States principally to practice medicine, his visa application will be refused unless he satisfies or is exempt from the VQE requirement.

5. A fifth grouping consists of those alien physician spouses of non-physician aliens who have labor certifications or who are otherwise eligible for immigrant visas.⁸³

Non-Immigrant Visa Applicants

Public Law 94-484 amended section 101(a)(15)(H) of the Act (which pertains to non-immigrant temporary workers) to prohibit alien medical graduates coming to practice in the United States from entering as H-2 non-immigrants (temporary workers in short supply).⁸⁴ It also prohibits alien medical graduates coming to receive graduate education or training from entering as H-3 non-im-

79. I. & N. Act § 203(a)(8), 8 U.S.C. § 1153(a)(8) (1976).

80. See 8 C.F.R. § 212.8(a) (1978); 22 C.F.R. § 42.91(a)(14)(i) (1978).

81. See 8 C.F.R. § 212.8(a) (1978); 22 C.F.R. § 42.91(a)(14)(ii)(d) (1978).

82. See 8 C.F.R. § 212(a) (1978); 22 C.F.R. § 42.91(a)(14)(ii)(d) (1977). INS regulations, 8 C.F.R. § 212.8(b)(4) (1978), and Department of State regulations, 22 C.F.R. § 42.91(a)(14)(ii)(D) (1978), specifically exempt alien immigrant investors from the labor certification requirement.

83. I. & N. Act § 203(a)(9), 8 U.S.C. § 1153(a)(9) (1976).

84. *Id.* § 101(a)(15)(H)(ii), 8 U.S.C. § 1101(a)(15)(H)(ii) provides that:

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(H) . . . an alien having a residence in a foreign country which he has no intention of abandoning . . . (ii) who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country, but this clause shall not apply to graduates

migrants (trainees).⁸⁵ Listed below are some common non-immigrant visa classifications that alien physicians can now use to come to the United States to perform medical services.

H-1 (Distinguished Merit and Ability)

Under the amendment to section 101(a)(15)(H) of the Act, effective January 10, 1977, an alien physician may now be classified H-1 only if he or she is coming to the United States to perform services as a member of the medical profession pursuant to an invitation from a public, nonprofit educational or research institution or agency in the United States, to teach or to conduct research, or both, at or for such institution or agency.⁸⁶

The INS originally published regulations governing the implementation of Public Law 94-484 that required the petitioner for an H-1 physician to establish that the beneficiary was coming to the United States *solely* to teach or to conduct research, or both, at the qualifying institution or agency.⁸⁷ The Senate conference report that accompanied Public Law 95-83 expressed the conferees' belief that the regulation limiting H-1 physicians *solely* to teaching or to research was not representative of Congress's intent in passing Public Law 94-484.⁸⁸ Present INS regulations require the physician to be coming *primarily* to teach or to conduct research, or both. Any patient-care activities must be incidental to the teaching or research.⁸⁹

of medical schools coming to the United States to perform services as members of the medical profession.

85. *Id.* § 101(a)(15)(H)(iii), 8 U.S.C. § 1101(a)(15)(H)(iii), excludes from H-3 non-immigrant status "an alien having a residence in a foreign country which he has no intention of abandoning . . . (iii) who is coming temporarily to the United States as a trainee . . . to receive graduate medical education or training . . ."

86. *Id.* § 101(a)(15)(H)(i), 8 U.S.C. § 1101(a)(15)(H)(i), provides that:

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability, and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency.

87. 42 Fed. Reg. 3,627 (1977).

88. Internal Memorandum on Foreign Medical Graduates, Visa Office, Department of State 3 (Sept., 1977).

89. The pertinent regulation provides that "[i]t must also be established documentarily that any patient care activities by the beneficiary are incidental to his/her teaching or research at or for the educational or research institution or agency." 43 Fed. Reg. 25,801 (1978).

Nationally or Internationally Renowned Physicians

Because the new section 101(a)(41) expressly removes aliens who are of national or international renown in the field of medicine from inclusion in the term "graduates of a medical school,"⁹⁰ these famous physicians could qualify for H-1 visas although neither coming to teach or to conduct research nor coming at the invitation of a public or nonprofit educational or research institution or agency.⁹¹ Such nationally or internationally famous physicians may also qualify for H-2 visas.⁹²

J-1 Exchange Visitors and the VQE: Exemptions and the "Substantial Disruption" Waiver

On or after January 10, 1978, exchange visitors (J-1 visa holders)⁹³ coming to the United States to participate in a program under which they will receive graduate medical education or training⁹⁴ must meet the new statutory requirements of section

90. I. & N. Act § 101(a)(41), 8 U.S.C.A. § 1101(a)(41) (West 1970 & Supp. 1978).

91. See note 86 and accompanying text *supra*.

92. See note 84 and accompanying text *supra*.

93. The amended Act provides that:

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Secretary of State, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182(j) of this title, and the alien spouse and minor children of any such alien if accompanying him or following to join him.

I. & N. Act § 101(a)(15)(j), 8 U.S.C.A. § 1101(a)(15)(j) (West Supp. 1978).

94. The Department of State defines graduate medical education or training as:

participation in a program in which the alien physician will receive graduate medical education or training, which generally consists of a residency or fellowship program involving health care services to patients, but does not include participation in a program involving observation, consultation, teaching or research in which there is no element or only incidental elements of patient care.

43 Fed. Reg. 13,505 (1978). Therefore, the specific requirements of law that apply to alien physicians who come to this country as exchange visitors to receive graduate medical education or training do not apply to alien physicians who come to this country to observe, consult, teach, or conduct research.

212(j) (1).⁹⁵ One of these requirements is passing the VQE. However, alien physicians who on January 9, 1977, were licensed, specialty board certified, and practising medicine in a state of the United States are exempt from the VQE requirement.⁹⁶ Graduates of accredited medical schools in the United States and in Canada also are exempt.⁹⁷

The alien physician who has not passed the VQE examination does not qualify for the licensed, specialty board certified, and practising-medicine-in-a-state exemption, and is not a graduate of an accredited medical school may still come to the United States on an exchange visitor visa to receive graduate medical education or training under the procedure set out in the new section 212(j) (2) (A).⁹⁸ This section provides that alien physicians may participate from January 10, 1978, until December 31, 1980, in accredited programs of graduate training in medical facilities where such programs would otherwise be "substantially disrupted" by their absence.⁹⁹ However, the number of aliens participating at any time in exchange programs affected by the substantial disruption waiver is not to exceed the number participating in such ac-

Alien physicians of national or international renown are not eligible for exchange visitor visas if they would be coming here for medical education or training. They would be eligible for these visas if they would be coming here for observation, teaching, or research (statement of Paul A. Cook, Chief, Exchange Visitors Program Branch, International Communication Agency, at the 1978 AINL Convention).

95. I. & N. Act § 212(j) (1), 8 U.S.C.A. § 1182(j) (1) (West 1970 & Supp. 1978).

The Ad Hoc Committee on Foreign Medical Graduates of the American Medical Association has taken the position that the VQE exemption should not be restricted to those licensed and practising physicians who have specialty board certifications but should also be available to those with an unrestricted state license. The Committee's rationale is that requiring specialty board certification is an "unfair use of a voluntary program of certification." A Newsletter for Graduates of Foreign Medical Schools, June, 1978, at 1 (A.M.A.).

96. See note 62 *supra*.

97. See note 57 and accompanying text *supra*.

98. The amended Act provides that:

(2)(A) Except as provided in subparagraph (B), the requirements of subparagraphs (A) and (B) of paragraph (1) shall not apply between the effective date of this subsection and December 31, 1980, to any alien who seeks to come to the United States to participate in an accredited program of graduate medical education or training if there would be a substantial disruption in the health services provided in such program because such alien was not permitted, because of his failure to meet such requirements, to enter the United States to participate in such program.

I. & N. Act § 212(j) (2) (A), 8 U.S.C.A. § 1182(j) (2) (A) (West Supp. 1978).

For a recent study by the American Medical Association and the American Hospital Association estimating the degree of disruption by 1980 that the medical and English competence requirements of Public Law 94-484 will cause in various geographical areas and types of programs, see Goodman, Jensen, & Way, *Foreign Medical Graduates and the Issue of Substantial Disruption of Medical Services*, 14 NEW ENGLAND J. MED. 745, 748 (1978).

99. I. & N. Act § 212(j) (2) (A), 8 U.S.C.A. § 1182(j) (2) (A) (West Supp. 1978).

credited programs on January 10, 1978.¹⁰⁰ The Director of the International Communication Agency, with the advice of the Secretary of HEW, will determine on a case-by-case basis whether a medical facility's inability to fill staff positions will "substantially disrupt" its ability to provide health services.¹⁰¹ HEW recently has established criteria for these waivers for use by the Director of the International Communication Agency.¹⁰² The Director has transmitted them to ECFMG for compliance.

An alien physician who can comply with subparagraphs (A) through (D) of section 212(j)(1) and who wishes to come to the United States as an exchange visitor to participate in a program under which he will receive graduate medical education or training must be documented by ECFMG with a Certificate of Eligibility for Exchange-Visitor Status (Form DSP-66).¹⁰³ An alien physician admitted under the "substantial disruption" provision of section 212(j)(2) must have passed the ECFMG examination and be documented by ECFMG with a Form DSP-66.¹⁰⁴

Medical institutions and hospitals can predictably obtain "substantial disruption" waivers on a case-by-case or institution-by-institution basis under the criteria and numerical limits described above from January 10, 1978, through December 31, 1980.¹⁰⁵ To obtain these waivers, medical institutions and hospitals must submit data to ECFMG demonstrating that they have met the criteria and have maintained the limits.¹⁰⁶ The issuance of a DSP-66 form by ECFMG will constitute the granting of a waiver to a particular alien physician under the "substantial disruption" provision of

100. *Id.* § 212(j)(2)(B), 8 U.S.C.A. § 1182(j)(2)(B).

101. 43 Fed. Reg. 13,504-08 (1978). The State Department published regulations relating to alien physicians coming to exchange programs in the United States in the *Federal Register* on March 31, 1978. See *id.* Publication was prior to the transfer of the functions of the Bureau of Educational and Cultural Affairs to the new International Communication Agency on April 1, 1978, under Exec. Order No. 12,048, 43 Fed. Reg. 13,361 (1978), and Reorg. Plan No. 2 of 1977, 3 C.F.R. 200 (1977).

102. Paul A. Cook, Chief, Exchange Visitors Program Branch, International Communication Agency, United States Department of State, made this announcement at the 1978 AINL Convention. A list of these criteria is contained in the attachments to the Memorandum by Dr. Ray L. Casterline, Executive Director of ECFMG (May 24, 1978). This list is reproduced in Appendix 1. A flow chart and summary of criteria is reproduced in Appendix 2.

103. 43 Fed. Reg. 13,505 (1978).

104. *Id.* at 13,507.

105. *Id.*

106. *Id.*

the law.¹⁰⁷

A United States university, academic medical center, school of public health, or other public health institution that the Director of the International Communication Agency has designated as an Exchange-Visitor Program Sponsor¹⁰⁸ is authorized to issue Form DSP-66 to alien physicians. This issuance enables them to come to the United States for the purpose of enrolling in programs in which they will engage in observation, consultation, teaching, or research and that do not include any clinical activities involving patient care.¹⁰⁹ Under these circumstances, the requirements of section 212(j)(1)(A) and (B) need not be met.

If the program under which the alien physician is coming to engage in observation, consultation, teaching, or research involves incidental patient care, the dean of the medical school must certify compliance with five specific points.¹¹⁰ The certification must be appended to the Form DSP-66 issued to the prospective exchange visitor. If the alien physician's activities will involve no patient care, the responsible program officer must so certify and append the certification to the Form DSP-66.¹¹¹

EXCHANGE VISITORS

Two-Year Foreign Residence Requirement

The recent amendments to the Act impose upon J-1 exchange visitor alien physicians not only the requirement of passing the

107. *Id.*

108. "Sponsor" is defined by Department of State regulations as "any reputable U.S. agency or organization or recognized international agency or organization having U.S. membership and offices which makes application as hereinafter prescribed to the Secretary for designation of a program under its sponsorship as an Exchange-Visitor Program and whose application is approved." 22 C.F.R. § 63.1 (1978).

109. 43 Fed. Reg. 13,507 (1978).

110.

(A) The program in which (name of physician) will participate is predominantly involved with observation, consultation, teaching or research.

(B) Any incidental patient contact involving the alien physician will be under the direct supervision of a physician who is a U.S. citizen or resident alien and who is licensed to practice medicine in the State of _____.

(C) The alien physician will not be given final responsibility for the diagnosis and treatment of patients.

(D) Any activities of the alien physician will conform fully with the State licensing requirements and regulations for medical and health care professions in the State in which the alien physician is pursuing the program.

(E) Any experience gained in this program will not be creditable towards any clinical requirements for medical specialty board certification.

Id.

111. *Id.*

VQE but also the two-year foreign residence requirement.¹¹² The latter provision makes an alien physician ineligible to apply for an immigrant visa, for permanent residence, or for a non-immigrant visa under section 101(a)(15)(H) or (L) until he has resided and been physically present in the country of his nationality or last residence for an aggregate of at least two years following departure from the United States.¹¹³ This requirement applies whether he was admitted to the United States as an exchange visitor on or after January 10, 1977, to receive graduate medical education or training or whether he acquired this status on or after that date for that purpose.¹¹⁴ Public Law 94-484 added this provision to section 212(e), and it became effective January 10, 1977. Already subject to the two-year foreign residence requirement were those aliens who were previously admitted as exchange visitors (or who acquired this status after admission), who participated in a funded program, or whose field of specialized knowledge or skill was on the Exchange-Visitor Skills List.¹¹⁵

Waivers of the two-year foreign residence requirement on the basis of a "no-objection" statement from the government of the alien's country of nationality or last residence will no longer be available to those alien physicians who were, after January 10, 1977, admitted as exchange visitors to receive graduate medical education or training or who acquired this status thereafter.¹¹⁶ With Public Law 94-484, Congress amended the second proviso of section 212(e)—which permitted a "no-objection" waiver—by making it inapplicable to J-1 exchange students receiving graduate medical education or training.¹¹⁷

Upon a favorable recommendation by the Director of the International Communication Agency, waivers will still be available in three situations: (a) after a satisfactory showing of exceptional hardship to the alien's United States citizen or permanent resident spouse or child, (b) after a satisfactory showing of inability to return to the alien's country of nationality or last residence because he would be subject to persecution on account of race, re-

112. I. & N. Act § 212(e), 8 U.S.C. § 1182(e) (1976), *as amended by* Health Professions Educational Assistance Act of 1976, Pub. L. No. 94-484, § 601(c), 90 Stat. 2243.

113. *Id.*

114. *Id.*

115. 22 C.F.R. § 41.65 (1978). For the Exchange-Visitor Skills List, *see* 37 Fed. Reg. 8,099-177 (1972), *as supplemented by* 43 Fed. Reg. 5,910 (1978).

116. I. & N. Act § 212(e), 8 U.S.C. § 1182(e) (1976).

117. *Id.*

ligion, or political opinion, (c) pursuant to the request by an interested United States government agency.¹¹⁸ However, an exchange visitor already participating as of January 9, 1977, in an exchange visitor program involving graduate medical education or training who had then obtained a waiver of or was not then subject to the foreign residence requirement of section 212(e) and who proceeds abroad temporarily and is returning to the United States to continue to participate in the same or a related program continues to be exempt from the foreign residence requirement.¹¹⁹

Alien physicians coming to the United States for the purpose of observation, consultation, teaching, or research are not automatically subject to the two-year foreign residence requirement under the amendment to section 212(e)¹²⁰ but would be subject to this requirement only if they participated in a governmentally funded program or if their country listed their skill or occupation on the Exchange-Visitor Skills List.¹²¹ Alien physicians subject to the two-year foreign residence requirement through such participation or skill are eligible for waivers under section 212(e) on the basis of "no-objection" statements as well as for the three other types of waivers described above.

Limitations on the Length of Stay of Exchange Visitors

New Department of State regulations discuss the conditions under which alien physicians who were issued exchange visitor

118. *Id.* Paul A. Cook, Chief, Exchange Visitors Program Branch, International Communication Agency, United States Department of State, said at the 1978 AINL Convention that since 1970, 80% of all two-year foreign residence requirement waivers had been based upon "no-objection" statements from the applicant's home government, 10-15% were based upon exceptional hardship, less than 1% were based on possible persecution, and even less on a favorable recommendation by the Secretary of State pursuant to the request by an interested government agency (most such recommendations coming from HEW).

119. State Department policy provides that:

An exchange visitor who leaves the U.S. temporarily for any reason and who needs a new visa or a revalidation of his current visa to reenter the U.S., to enable him to continue participation in the program in which he was last authorized to participate with no change in program objective shall not be subject to the two-year foreign residence requirement by reason thereof.

Memorandum issued by Department of State (June 12, 1972) (on file with Allen E. Kaye).

120. In the supplemental information section preceding recently published Department of State rules and regulations, it is "noted that the specific requirements of law which apply to alien physicians who come to the United States to receive graduate medical education or training do not apply to alien physicians who come to this country as exchange-visitors to observe, consult, teach, or conduct research." 43 Fed. Reg. 13,505 (1978). For the definition of "graduate medical education or training," see 22 C.F.R. § 63.1 (1978).

121. *Id.* at 13,507-08.

visas for graduate medical education or training *prior* to January 10, 1978, will be permitted to continue their education or training in the United States.¹²² These regulations help to clarify what was to some a confusing area. Those who came to the United States *on or after* January 10, 1978, on exchange visitor visas, or acquired this status after coming here, are subject to the limitations on stay of section 212(j)(1)(D).¹²³

122. *Id.* at 13,508.

123. I. & N. Act § 212(j)(1)(D), 8 U.S.C.A. § 1182(j)(1)(D) (West 1970 & Supp. 1978).

APPENDIX 1

CRITERIA AND NUMERICAL LIMITS FOR WAIVERS UNDER THE "SUBSTANTIAL DISRUPTION" PROVISION*

CATEGORY A:

For accredited graduate medical education training programs which had more than 25 percent of all their positions occupied by *alien physicians* on January 10, 1978, *and* which are in anesthesiology, child psychiatry, general practice, nuclear medicine, pathology, pediatrics, physical medicine, psychiatry, or therapeutic radiology, the training programs may apply for, and receive, waivers provided that

1. in 1978, the total number of J-1 visa holders, in each program does not exceed the total number of J-1 visa holders on January 10, 1978, and the total number of alien physicians in the program does not exceed 90 percent of the number of alien physicians on January 10, 1978;
2. in 1979, the total number of J-1 visa holders, in each program does not exceed 90 percent of the number of J-1 visa holders on January 10, 1978, and the total number of alien physicians in the program does not exceed 80 percent of the number of alien physicians on January 10, 1978; and
3. in 1980, the total number of J-1 visa holders in each program does not exceed 80 percent of the number of J-1 visa holders on January 10, 1978, and the total number of alien physicians in the program does not exceed 70 percent of the number of alien physicians on January 10, 1978.

CATEGORY B:

For accredited graduate medical education training programs which had more than 25 percent of all their positions occupied by alien physicians on January 10, 1978, *AND* which are in specialties other than those described in Category A above but providing 50 percent or more of its [*sic*] full-time equivalent training in a facility located in a primary medical care manpower shortage area designated under Section 332 of the Public Health Service Act *or* with more than 25 percent Medicaid patients, the training programs may apply for, and receive, waivers provided that

1. in 1978, the total number of J-1 visa holders, in each program does not exceed the total number of J-1 visa holders on January 10, 1978, and the total number of alien physicians in the program does not exceed 90 percent of the number of alien physicians on January 10, 1978;
2. in 1979, the total number of J-1 visa holders in each program does not exceed 90 percent of the number of J-1 visa holders on January 10, 1978, and the total number of alien physicians in the program does not exceed 80 percent of the number of alien physicians on January 10, 1978; and

* *Reprinted from* Memorandum by Dr. Ray L. Casterline, Executive Director of ECFMG (with attachments) (May 24, 1978). *See* note 102 and accompanying text *supra*.

3. in 1980, the total number of J-1 visa holders in each program does not exceed 80 percent of the number of J-1 visa holders on January 10, 1978, and the total number of alien physicians in the program does not exceed 70 percent of the number of alien physicians on January 10, 1978.

CATEGORY C:

For accredited graduate medical education training programs which are in specialties or locations other than those described in Category A or B *and* have more than 50 percent of all of their positions occupied by alien physicians on January 10, 1978, the training programs may apply for, and receive, waivers provided that

1. in 1978, the total number of J-1 visa holders in each program does not exceed the total number of J-1 visa holders in the program on January 10, 1978, and the total number of alien physicians in the program does not exceed 80 percent of the number of alien physicians on January 10, 1978;
2. in 1979, the total number of J-1 visa holders in each program does not exceed 80 percent of the total number of J-1 visa holders on January 10, 1978, and the total number of alien physicians in the program does not exceed 60 percent of the number of alien physicians on January 10, 1978; and
3. in 1980, the total number of J-1 visa holders in each program does not exceed 60 percent of the total number of J-1 visa holders on January 10, 1978, and the total number of alien physicians in the program does not exceed 70 percent of the number of alien physicians on January 10, 1978.

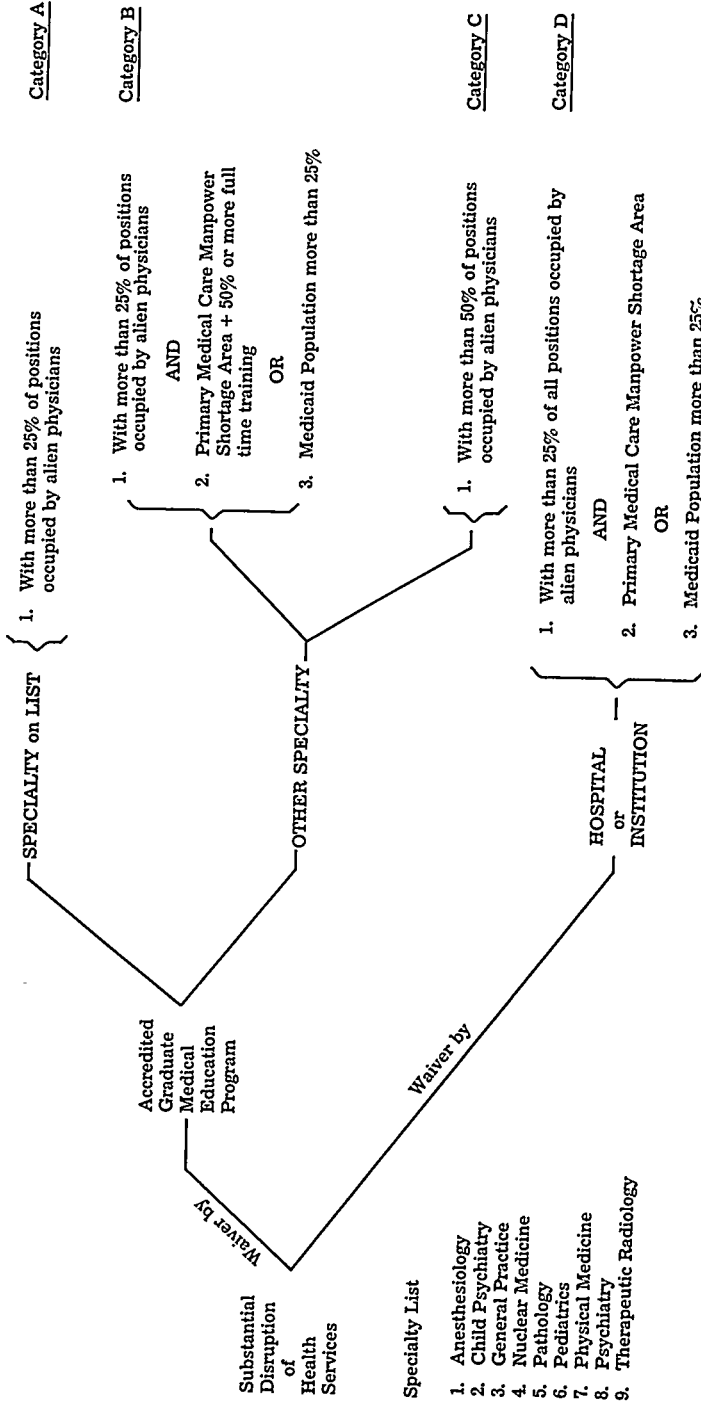
Training programs which are conducted in more than one facility as integrated programs and which obtain a waiver [under categories A-C] for one or more positions must maintain the same percentage distribution of training positions among the participating facilities as was the case on January 10, 1978.

CATEGORY D:

A hospital (a) which had more than 25 percent alien physicians, in total, in its training programs conducted solely within its facilities, on January 10, 1978, *AND* (b) which is located in a primary medical care manpower shortage area designated under Section 332 of the Public Health Service Act *or* has more than 25 percent Medicaid patients, may apply for and obtain waivers for those training programs conducted solely within its facilities, distributed among such programs at its discretion, provided that

1. in 1978, the total number of J-1 visa holders in such programs does not exceed the total number of J-1 visa holders on January 10, 1978, and the total number of alien physicians, in such programs does not exceed 90 percent of the number of alien physicians on January 10, 1978;
2. in 1979, the total number of J-1 visa holders in such programs does not exceed 90 percent of the total number of J-1 visa holders on January 10, 1978, and the total number of alien physicians in such programs does not exceed 80 percent of the number of alien physicians on January 10, 1978; and
3. in 1980, the total number of J-1 visa holders in such programs does not exceed 80 percent of the total number of J-1 visa holders on January 10, 1978, and the total number of alien physicians in such programs does not exceed 70 percent of the number of alien physicians on January 10, 1978.

APPENDIX 2
 FLOW CHART AND SUMMARY OF CRITERIA AND NUMERICAL LIMITS
 FOR WAIVERS UNDER THE "SUBSTANTIAL DISRUPTION" PROVISION*



* Reprinted from Memorandum by Dr. Ray L. Casterline, Executive Director of ECFMG (with attachments) (May 24, 1978). See note 102 and accompanying text *supra*.