



JUN 24 2014

Memorandum

TO: Maria Odom
Citizenship and Immigration Services Ombudsman

FROM: Lori Scialabba *Lori Scialabba*
Acting Director

SUBJECT: Response to Citizenship and Immigration Services Ombudsman Formal
Recommendation 57, "Employment Eligibility for Derivatives of Conrad State 30
Program Physicians"

Recommendations

The Citizenship and Immigration Services Ombudsman (CISOMB) recommends that U.S. Citizenship and Immigration Services (USCIS):

1. Publish new regulations that permit independently eligible J-2 dependents of J-1 physicians approved for a Conrad State 30 program waiver to change to other employment-authorized nonimmigrant classifications; and
2. Issue new policy guidance clearly explaining that J-2 visa holders, who are derivative beneficiaries of a Conrad State 30 program waiver, may change to any nonimmigrant status for which they are otherwise qualified and eligible.

USCIS Responses to Recommendations

1. **Publish new regulations that permit independently eligible J-2 dependents of J-1 physicians approved for a Conrad State 30 program waiver to change to other employment-authorized nonimmigrant classifications.**

USCIS concurs in principle with this recommendation. As discussed below, USCIS does not believe that a J-2 dependent of a J-1 foreign medical graduate can change to H-1B status, or any other employment-authorized nonimmigrant classification (with the exception of T or U status) until the principal Conrad State 30 waiver recipient has fulfilled his or her three-year employment obligations in a medically underserved area. However, USCIS is open to reviewing current regulations and considering whether steps should be taken to enable such J-2 dependents to engage in employment while in H-4 status.

2. Issue new policy guidance clearly explaining that J-2 visa holders, who are derivative beneficiaries of a Conrad State 30 program waiver, may change to any nonimmigrant status for which they are otherwise qualified and eligible.

USCIS does not concur with this recommendation. USCIS does not believe the CISOMB’s objective can be accomplished through a policy memorandum. Any alien who is subject to the two-year foreign residence requirement is prohibited from changing to, or otherwise acquiring, H or L nonimmigrant status or immigrant status. *See* Immigration and Nationality Act (INA) 212(e). Additionally, J-1 foreign medical graduates (*and* their J-2 dependents) are specifically prohibited from changing to *any* other nonimmigrant status, except T or U status. *See* INA 248(a)(2) and (b).

Notwithstanding this general prohibition against a change of status, a J-1 foreign medical graduate who qualifies for a Conrad State 30 waiver may change to H-1B nonimmigrant classification, *pursuant to the terms and conditions of INA 214(l)*. *See* INA 214(l)(2)(A). One of the terms and conditions of INA 214(l) is that individuals who fail to fulfill the terms of their Conrad State 30 waiver are ineligible to apply for an immigrant visa, permanent residence, or any other change of nonimmigrant status, until the two-year foreign residence requirement has been satisfied. *See* INA 214(l)(2)(B). A beneficiary of a Conrad State 30 waiver (which includes both the principal beneficiary and any derivative beneficiaries) is once again subject to the two-year foreign residence requirement if the principal beneficiary fails to satisfy all the terms and conditions of the waiver. *See* INA 214(l)(3)(A).

Consequently, the clause within 8 CFR 212.7(c)(9), which states that principal Conrad State 30 waiver beneficiaries “may” apply for a change of status from J-1 to H-1B status, cannot be interpreted as “permissive.” Rather, a principal Conrad State 30 waiver beneficiary may only change to H-1B status in accordance with, and subject to, the terms, conditions, and restrictions contained in INA 214(l)(2)(A).

Similarly, the clause within 8 CFR 212.7(c)(9), which states that derivative Conrad State 30 waiver beneficiaries “may” apply for a change of status from J-2 to H-4 status, is not permissive. Pursuant to 8 CFR 212.7(c)(9), a derivative Conrad State 30 waiver beneficiary may only change to H-4 status. The derivative waiver beneficiary becomes eligible to change to H-1B status only after the principal waiver recipient has fulfilled all the terms and conditions placed on the waiver by INA 214(l).

USCIS thanks the CISOMB for these recommendations and we will continue to review current regulations and policy guidance. We look forward to further partnership with the CISOMB on this issue.