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**10. Should I Stay or Should I Go? The Dilemma of the FMG in the United States Seeking a PGY Position While in B-2 Status**

Over the last 20 years, the following scenario is often presented- by foreign medical school graduates:

“I am presently in the United States in B-2 status as a visitor. My B-2 status expires after my residency starts. Should I remain in United States and process my H-1B petition and seek a change in status or should I depart the United States?”

Prior to the tragedy of September 11th, the answer was relatively simple. If the IMG had a clean record with the US consulate, there was no reason to doubt that the consulate would be willing to issue the H-1B visa to the applicant. Accordingly, the IMGs may have determined that it was practical for them to return home to obtain an H-1B visa or J-1 visa in their passports, thereby allowing them to travel freely to and from the United States while in their respective status. Additionally, the IMG might visit family and friends in their home country that they may not see again for a long time once the residency started. Once the H-1B petition was approved, the IMG would apply with any dependents for their visas at the U.S. Consulate, thereby having the ability to travel to and from the United States while in H status.

As a result of September 11th, more stringent security clearance procedures are in effect. As a result, some individuals have faced delays in obtaining the H – 1B visas and other visas ranging from a few weeks to several months. It is difficult to predict when a delay will occur. However, the more common your name, the more likely you will face a delay. Additionally, nationals of certain countries as listed in the previous memo, entitled “Procedure for Obtaining the H-1B visa at a U.S. Consulate”, may be more likely to face a delay. It is STRONGLY recommended that options and risks be discussed with an attorney when you first enter the US for interviews, USMLE exams or when you are here for other reasons. Doctors have lost residency slots due to delays in visa issuance due to security clearance problems.

 Additionally, due to tightened security, it is more difficult to get an appointment scheduled at a US Consulate, in the few months between the Match results being released and the start date of the H petition.

Occasionally, IMG’s have represented to consul officers that they were coming to the United States to attend a conference, but then never actually attended the conference. If the consul officer determines that a visa applicant may have misrepresented their true intent when they applied for the B visa, the consul officer may refuse to issue another non-immigrant visa.

Many IMG’s obtain student visas for Master of Public Health programs but then they change to a different program, never attend the program or leave the program before completion. This may lead to problems at the consulate.

If an individual is seeking a change in status to H-1B status, and their employment commences subsequent to the expiration of their status, USCIS should not grant a change of status to H-1B status since the individual has not maintained legal status during the intervening period. For example, if an individual’s B-2 status expires on February 2nd and the residency starts July 1st, the USCIS should not grant the change of status since the individual was out of status between February 2nd and July 1st. However,even if the USCIS grants a change of status under those circumstances, there could be very serious ramifications. Please see the discussion on this issue contained in the memo entitled “The H-1B Visa.”

An individual submitting an application to extend their visitor status should not have the intent to get the extension and then file for a change of status to H-1B status, as there may be issues regarding fraudulent intent with regard to B-2 application. Additionally, should they then decide to go home, they may have serious problems obtaining another visa.

Individuals who return home for renewals of H – 1B visas have also faced delays in the issuance of the visa, even when previous H – 1B visas were issued without any delay. Prior experience at a consulate does not guarantee that you will not have problems on future visa applications.

It is strongly recommended that you discuss all options regarding your visa status with an attorney in order to select the option that will best serve your needs.

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