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1. **National Interest Waivers for Physicians**

Section 203(b)(2) of the Immigration and Nationality Act of 1990 permits the filing of an employment-based second-preference immigrant visa petition for an alien who is “either a member of the professions holding an advanced degree” or “of exceptional ability in the sciences, arts or business.” The petition incorporates a request for a waiver of the requirement of a job offer (the labor certification requirement), on the grounds that the alien would benefit the national interest of the United States.

The National Interest Petition, a procedure to obtain Resident Alien Status, can also be filed at any time, regardless of status, if a physician will be employed in a HPSA, or perhaps in a MUA, or at a VA facility. The Petition, which is submitted to USCIS, is often referred to as "National Interest Waiver." (It is not to be confused with the J-1 waiver). This petition for an Alien Worker seeks a waiver of the Labor Certification process on the grounds that the services to be rendered by an individual will benefit the National Interest of the United States. Occasionally, USCIS has requested a State License to practice medicine, before approving the Petition. This is probably not required. In most states, the license will not be issued prior to the completion of Residency and the verification of credentials.

The following are required for the NIW:

a. Five year contract for full time employment in a HPSA (MUA in some states) or a health care facility operated by the Department of Veteran’s Affairs. The contract cannot be more than six months old.

1. A letter from a federal agency reflecting the agency’s knowledge of the alien’s qualifications and the agency’s background in making determinations in matters involving medical affairs, so as to substantiate the findings that the alien’s work is or will be in the public interest, dated and issued within six months of filing the petition.

Or

1. Letter from the State Department of Health attesting that the alien physician’s work is or will be in the public interest and reflecting that they have jurisdiction over the place where the individual intends to be employed, dated and issued within six months of filing the petition.

An Application for Adjustment of Status can be filed simultaneously with the I-140 National Interest Waiver, as long as the Priority Date on the case has been reached. However, approval of the application will be reserved until after the five-year employment commitment has been satisfied. The Application for Employment Authorization is usually processed within 3-4 months of filing. Adjustment to Permanent Resident Status will not be granted to the physician until the physician has completed a total of five years (not including time spent as a J-1 physician holder) as a physician employed in the designated area. Most states will not allow you to count time spent in H – 1B status as a resident at a hospital in a shortage area towards the 5 years.

If the employee leaves the place of employment listed on the NIW, the individual can still benefit from the approved petition, if the new position is also in a HPSA, MUA or other facility qualifying for an NIW. The five years start accruing on your first day of employment in H-1B status regardless of when the National Interest Petition was approved.

A question which is being raised constantly is whether an individual should file an application for Alien Employment Certification (Labor Certification) or proceed with the National Interest Waiver. For physicians who have been granted waivers of the J-1 two-year foreign residency requirement, and are presently employed in H-1B status, it is uncertain whether the procedure for Permanent Resident Status through Labor Certification will result in the granting of Adjustment of Status in a more expedient fashion than the National Interest Waiver. The Labor Certification process requires the physician to remain employed with the petitioning entity after being granted Permanent Resident Status, unless the Application for Adjustment of Status is pending more than 180 days. See the memo regarding Labor Certification. Presently, processing an application for Labor Certification is approximately one year, from the time the attorney starts working on the case. It will take about 6 to 10 months to process the I-140 petition, 15 days with premium processing. Adjustment of Status is approximately three months to a year, assuming there are no delays for security clearances for backlogs at immigration. Adding on a reasonable period of six months of employment with the sponsoring employer after the Application for Adjustment of Status has been granted, will probably come close to, if not exceed, the five year period required for individuals who elect to utilize the National Interest Waiver process. However, processing times do vary. Please note that time can be saved by processing the last phase of the case at the U.S. Consulate in your home country.

Please consult with an attorney as to the benefits of doing one case or both.

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