

Zneimer & Zneimer p.c.
2400 North Western Ave.
Suite 203
Chicago, Illinois 60647



Phone: (773) 342.2044
Toll Free: (877) 342-2044
Fax: (773) 304-3185
www.zneimerlaw.com

Early Termination of Employment Pursuant to J1 Waiver

THREE YEARS EMPLOYMENT REQUIREMENT. A foreign medical graduate may only fulfill the requisite 3-year employment contract as an H1B nonimmigrant. A foreign medical graduate who receives a waiver and changes his or her nonimmigrant classification from J1 to H1B, may not apply for permanent residence or for any other change of nonimmigrant classification unless he or she has fulfilled the 3-year employment contract with the health care facility and in the specified HHS designated shortage area named in the waiver application.

FAILURE TO MEET THE TERMS AND CONDITION OF THE WAIVER. A foreign medical graduate who fails to meet the terms and conditions imposed on the waiver will once again become subject to the 2-year requirement.

EARLY TERMINATION. Under the regulations, the USCIS, in the exercise of discretion, may excuse an early termination of the foreign medical graduate's 3 year period of employment with the health care facility that is named in the waiver application due to extenuating circumstances. Extenuating circumstances may include, but are not limited to, closure of the health facility or hardship to the alien. In determining whether to excuse such early termination of employment, the service will base its decision on the specific facts of each case.

BURDEN ON THE ALIEN. Depending on the circumstances, closure of the health care facility named in the waiver application may, but need not, be considered an extenuating circumstance excusing early termination of employment. Under no circumstance will a foreign medical graduate be eligible to apply for change of status to another nonimmigrant category, for an immigrant visa or for status as a lawful permanent resident prior to completing the requisite 3-year period of employment for a health care facility located in a HHS designated shortage area. In all cases, the burden of establishing eligibility for a favorable exercise of discretion rests with the alien.

REQUIRED EVIDENCE. A foreign medical graduate who seeks to have early termination of employment excused due to extenuating circumstances must submit documentary evidence establishing such a claim of extenuating circumstances. In all cases, the foreign medical graduate shall submit

(1) an employment contract with another health care facility located in an HHS designated shortage area for the balance of the required 3-year period of employment.



(2) A foreign medical graduate claiming extenuating circumstances based on hardship shall also submit evidence establishing that such hardship was caused by unforeseen circumstances beyond his or her control.

(3) A foreign medical graduate claiming extenuating circumstances based on closure of the health care facility named in the waiver application shall also submit evidence that the facility has closed or is about to be closed.

NOTIFICATION REQUIREMENTS. A J1 foreign medical graduate who has been granted a waiver of the 2-year requirement, is required to comply with the terms and conditions specified in the statute and the regulations. If the foreign medical graduate subsequently applies for and receives H1B status, he or she must also comply with the terms and conditions of that nonimmigrant status. Such compliance shall also include notifying the Service of any material change in the terms and conditions of the H1B employment, by filing either an amended or a new H1B petition.

AMENDED H1B PETITION. The health care facility named in the waiver application and H1B petition shall file an amended H1B petition, if there are any material changes in the terms and conditions of the beneficiary's employment or eligibility as specified in the waiver application and in the subsequent H1B petition. In such a case, an amended H1B petition shall be accompanied by evidence that the alien will continue practicing medicine with the original employer in an HHS-designated shortage area.

NEW H1B PETITIONS. A health care facility seeking to employ a foreign medical graduate who has been granted a waiver prior to the time the alien has completed his or her 3-year contract with the facility named in the waiver application and original H1B petition, must file a new H1B petition with the Service. Although a new waiver application need not be filed, the new H1B petition must also be accompanied by the documentary evidence generally required for H-1B petitions and the following additional documents:

- (1) A copy of Form I797 (and/or I797A and I797B) relating to the waiver and nonimmigrant H status;
- (2) An explanation from the foreign medical graduate, with supporting evidence, establishing that extenuating circumstances necessitate a change in employment;
- (3) An employment contract establishing that the foreign medical graduate will practice medicine at the health care facility named in the new H1B petition for the balance of the required 3-year period; and
- (4) Evidence that the geographic area or areas of intended employment indicated in the new H1B petition are in HHS-designated shortage areas.

USCIS DECISION IF AN AMENDED H1B IS FILED. Review of amended and new H1B petitions for foreign medical graduates who seek to have early termination of employment excused due to extenuating circumstances may be affirmed, and the amended H1B petition



may be approved, if the petitioning health care facility establishes that the foreign medical graduate otherwise remains eligible for H1B classification and that he or she will continue practicing medicine in an HHS-designated shortage area.

USCIS DECISION IF A NEW H1B IS FILED BY A NEW FACILITY. The USCIS will review a new H1B petition filed on behalf of a foreign medical graduate who has not yet fulfilled the required 3-year period of employment with the health care facility named in the waiver application and in the original H1B petition to determine whether extenuating circumstances exist which warrant a change in employment, and whether the waiver granted should be affirmed. In conducting such a review, the USCIS will determine whether the foreign medical graduate will continue practicing medicine in an HHS-designated shortage area, and whether the new H1B petitioner and the foreign medical graduate have satisfied the remaining H1B eligibility criteria for H-1B petitions. If these criteria have been satisfied, the waiver granted to the foreign medical graduate may be affirmed, and the new H1B petition may be approved in the exercise of discretion, thereby permitting the foreign medical graduate to serve the balance of the requisite 3-year employment period at the health care facility named in the new H1B petition.

FAILURE TO NOTIFY THE SERVICE OF ANY MATERIAL CHANGES IN EMPLOYMENT.

Foreign medical graduates who have been granted a waiver of the 2-year requirement and who have obtained H1B but fail to: Properly notify the Service of any material change in the terms and conditions of their H1B employment, by having their employer file an amended or a new H1B petition in accordance with the law and regulations; or establish continued eligibility for the waiver and H1B status, shall (together with their dependents) again become subject to the 2-year requirement. Such foreign medical graduates and their accompanying H4 dependents also become subject to deportation under section 241(a)(1)(C)(i) of the Act.

For any questions, please contact Sofia Zneimer (773) 342-2044 or sofia@zneimerlaw.com