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The Honorable Alejandro Mayorkas
Director
U.S. Citizenship & Immigration Services
20 Massachusetts Ave. N.W.
Washington, D.C. 20529-2000

Dear Director Mayorkas:

I write to ask that the USCIS return to its longstanding policy and practice of allowing the dependents of Conrad State 30 program physicians to change classification to statuses other than H-4. The Conrad 30 program, which I authored nearly 20 years ago, has brought more than 10,000 doctors to rural and other medically underserved areas, helping to alleviate the serious physician shortage facing many communities. The future success of the program is threatened by policy that makes it more difficult for Conrad 30 doctors to fully integrate their families into these communities.

The statute itself provides that J-1 waiver physicians for whom the two-year home residence requirement has been waived under may apply for a change of status to H-1B so that they may carry out the terms of their J-1 waiver commitment. USCIS regulations acknowledge this statutory section at 8 C.F.R. §212.7(c)(9):

If the Service approves a waiver request made under Pub. L. 103-416, the foreign medical graduate (and accompanying dependents) may apply for a change of nonimmigrant status, from J-1 to H-1B and, in the case of dependents of such a foreign medical graduate, from J-2 to H-4.

It is my understanding that the Service, in a reversal of longstanding practice, is interpreting this language to mean that, because the statute provides that J-1 waiver physicians *may* be granted a change of status from J-1 to H-1B, that their J-2 dependents can *only* change status to H-4, as derivatives of their spouses, rather than to a work-authorized visa classification such as H-1B. As a result, J-2 spouses whose employers petition for a change of status to H-1B, or who change status to H-4 initially and then seek a further change of status from H-4 to H-1B at a later date, are being denied a change of status to H-1B from within the U.S.

As you know, the statute grants a waiver of the two-year foreign residency requirement to J-1 physicians who agree to complete a three-year clinical service commitment. A physician again becomes subject to the residence requirement and the other restrictions imposed on J-1 physicians if the terms of the three-year commitment are not satisfied. The waiver is revocable if the physician fails to complete that commitment, but is considered granted at the time the physician commences the three-year commitment. Just as the J-1 is thereby permitted to change status to H-1B, the J-2 spouse should likewise be eligible for a change of status to a work-authorized visa classification.

As the author and principal sponsor of the Conrad 30 legislation, I can tell you that Congress did not intend to impede the ability of J-2 spouses to work in H-1B status during the three year J-1 waiver commitment term of their spouses. The entire purpose of the program is to help place physicians into rural, medically underserved areas. One of the most difficult aspects of these rural placements is integrating physician families into new communities. Congress acknowledged during legislative debates to extend this legislation that it can be even more challenging to recruit a physician's spouse since small communities lack many of the conveniences of metropolitan areas. One of the ways to attract families is by permitting spouses continued employment without significant interruption.

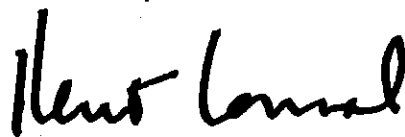
Many J-2 spouses are themselves U.S.-trained physicians who are willing to work in medically underserved areas at the same time that the J-1 spouse is completing the waiver commitment. Yet, the current prohibition on a change of status to anything other than H-4 means that the medical care they are willing and able to provide is needlessly delayed as the J-2 spouse is forced to travel abroad to apply for a visa stamp before being able to start work. In one recent example brought to my attention, (WAC1215651282), a J-2 physician had to fly home to Amman, Jordan to apply for an H-1B visa due to the policy of disallowing a change of status. This resulted in a three-week delay in her ability to begin working at the same underserved hospital where her J-1 spouse was approved to begin work after having filed a change of status petition. It also caused needless disruption and expense to the physician and her two U.S. citizen children, ages 4 and 18 months.

Denying H-1B status to the spouses of the H-1B physicians interferes with the purpose of the Conrad 30 program to support the placement of J-1 physicians and their families in communities acutely in need of medical services. It is also out of step with the Obama administration's initiatives to expand the accessibility and affordability of healthcare to all Americans.

I urge you to direct your staff to reverse this apparent interpretation and to return to the prior USCIS policy that while the J-2 spouse of a J-1 physician granted a waiver under §1184(l) *may* change status to H-4, that spouse is not precluded from changing status to another visa classification. Failing that, USCIS should update its policy and rules to allow for such status changes. The agency should implement a policy that returns to the spirit and intent of the Conrad 30 program and supports the placement of physicians and their families in the most needed areas of our country.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Kent Conrad". The signature is written in a cursive, slightly slanted style.

Kent Conrad
United States Senator