



December 12, 2022

Sarah K. Peterson
Chair
International Medical Graduate Taskforce Liaison Committee
sarah@spsimmigration.com

Dear Ms. Peterson:

Thank you for your August 18, 2022, letter to U.S. Citizenship and Immigration Services (USCIS) regarding Physician National Interest Waivers (PNIW).

In August 2022, USCIS became aware of the premature approval of several Forms I-485, Application to Register Permanent Residence or Adjust Status, for physicians subject to the PNIW requirements. In response, USCIS issued a reminder of current guidance to field offices to ensure proper handling of Form I-485 applications subject to the PNIW requirements.

USCIS also identified all known premature approvals and issued specific guidance on how to resolve the erroneous approvals in a manner that we hope will minimize impact to the affected noncitizens. In each case, this process included voluntary rescission of lawful permanent resident status, coordinated return of the Permanent Resident Card, and reopening of the erroneously approved Form I-485 to return the application to pending status. Each reopened Form I-485 will be held in pending status until the individual noncitizen has worked full-time as a physician for an aggregate of five years in the shortage area and is eligible for the PNIW.

USCIS is working to identify, as early in the process as possible, those Form I-485 applications subject to the PNIW criteria. USCIS has established a centralized location at the National Benefits Center to hold and monitor those Form I-485 applications subject to the PNIW criteria to prevent premature approvals in the future.

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director

This content is from the eCFR and is authoritative but unofficial.

Title 8 - Aliens and Nationality

Chapter I - Department of Homeland Security

Subchapter B - Immigration Regulations

Part 245 - Adjustment of Status to That of Person Admitted for Permanent Residence

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105-100, section 202, 111 Stat. 2160, 2193; Pub. L. 105-277, section 902, 112 Stat. 2681; Pub. L. 110-229, tit. VII, 122 Stat. 754; 8 CFR part 2.

§ 245.18 Physicians with approved employment-based petitions serving in a medically underserved area or a Veterans Affairs facility.

- (a) *Which physicians are eligible for this benefit?* Any alien physician who has been granted a national interest waiver under § 204.12 of this chapter may submit Form I-485 during the 6-year period following Service approval of a second preference employment-based immigrant visa petition.
- (b) *Do alien physicians have special time-related requirements for adjustment?*
 - (1) Alien physicians who have been granted a national interest waiver under § 204.12 of this chapter must meet all the adjustment of status requirements of this part.
 - (2) The Service shall not approve an adjustment application filed by an alien physician who obtained a waiver under section 203(b)(2)(B)(ii) of the Act until the alien physician has completed the period of required service established in § 204.12 of this chapter.
- (c) *Are the filing procedures and documentary requirements different for these particular alien physicians?* Alien physicians submitting adjustment applications upon approval of an immigrant petition are required to follow the procedures outlined within this part with the following modifications.
 - (1) Delayed fingerprinting. Fingerprinting, as noted in the Form I-485 instructions, will not be scheduled at the time of filing. Fingerprinting will be scheduled upon the physician's completion of the required years of service.
 - (2) Delayed medical examination. The required medical examination, as specified in § 245.5, shall not be submitted with Form I-485. The medical examination report shall be submitted with the documentary evidence noting the physician's completion of the required years of service.
- (d) *Employment authorization.*
 - (1) Once USCIS has approved a petition described in paragraph (a) of this section, the alien physician may apply for permanent residence and employment authorization on the forms designated by USCIS with the fee prescribed in 8 CFR 106.2 and in accordance with the form instructions.
 - (2) Since section 203(b)(2)(B)(ii) of the Act requires the alien physician to complete the required employment before USCIS can approve the alien physician's adjustment application, an alien physician who was in lawful nonimmigrant status when he or she filed the adjustment application is not required to maintain a nonimmigrant status while the adjustment application remains pending. Even if the alien physician's nonimmigrant status expires, the alien physician shall not be considered to be unlawfully present, so long as the alien physician is practicing medicine in accordance with § 204.5(k)(4)(iii) of this chapter.

8 USC 1153: Allocation of immigrant visas Text contains those laws in effect on December 8, 2022
From Title 8-ALIENS AND NATIONALITYCHAPTER 12-IMMIGRATION AND NATIONALITYSUBCHAPTER II-IMMIGRATIONPart I-Selection System
Jump To: [Source Credit](#)[MiscellaneousReferences In Text](#)[AmendmentsEffective Date](#)

§1153. Allocation of immigrant visas

(a) Preference allocation for family-sponsored immigrants

Aliens subject to the worldwide level specified in section 1151(c) of this title for family-sponsored immigrants shall be allotted visas as follows:

(1) Unmarried sons and daughters of citizens

Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the class specified in paragraph (4).

(2) Spouses and unmarried sons and unmarried daughters of permanent resident aliens

Qualified immigrants-

(A) who are the spouses or children of an alien lawfully admitted for permanent residence, or

(B) who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence,

shall be allocated visas in a number not to exceed 114,200, plus the number (if any) by which such worldwide level exceeds 226,000, plus any visas not required for the class specified in paragraph (1); except that not less than 77 percent of such visa numbers shall be allocated to aliens described in subparagraph (A).

(3) Married sons and married daughters of citizens

Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the classes specified in paragraphs (1) and (2).

(4) Brothers and sisters of citizens

Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).

(b) Preference allocation for employment-based immigrants

Aliens subject to the worldwide level specified in section 1151(d) of this title for employment-based immigrants in a fiscal year shall be allotted visas as follows:

(1) Priority workers

interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer

(i) National interest waiver

Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(ii) Physicians working in shortage areas or veterans facilities

(I) In general

The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if-

(aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

(bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

(II) Prohibition

No permanent resident visa may be issued to an alien physician described in subclause (I) by the Secretary of State under section 1154(b) of this title, and the Attorney General may not adjust the status of such an alien physician from that of a nonimmigrant alien to that of a permanent resident alien under section 1255 of this title, until such time as the alien has worked full time as a physician for an aggregate of 5 years (not including the time served in the status of an alien described in section 1101(a)(15)(J) of this title), in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs.

(III) Statutory construction

Nothing in this subparagraph may be construed to prevent the filing of a petition with the Attorney General for classification under section 1154(a) of this title, or the filing of an application for adjustment of status under section 1255 of this title, by an alien physician described in subclause (I) prior to the date by which such alien physician has completed the service described in subclause (II).

(IV) Effective date

The requirements of this subsection do not affect waivers on behalf of alien physicians approved under subsection (b)(2)(B) before the enactment date of this subsection. In the case of a physician for whom an application for a waiver was filed under subsection (b)(2)(B) prior to November 1, 1998, the Attorney General shall grant a national interest waiver pursuant to subsection (b)(2)(B) except that the alien is required to have worked full time as a physician for an aggregate of 3 years (not including time served in the status of an alien described in section 1101(a)(15)(J) of this title) before a visa can be issued to the alien under section 1154(b) of this title or the status of the alien is adjusted to permanent resident under section 1255 of this title.