

Memo for NBER-Sloan Meeting on High-Skill Immigration Data

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FOIA Request on J-1 Visa Waivers: An Unsuccessful Tale

Background

The main pathway for International Medical Graduates (IMGs) to become licensed physicians in the United States is to complete a residency program. While several visa types are available to IMGs (such as the H-1B visa for specialty occupations), most of them entered the U.S. on J-1 visas during their residency.

The J-1 visa is a temporary visa that authorizes IMGs to obtain a graduate level medical education in the U.S.. Once they have completed their residency on a J-1 visa, these IMG physicians are required to return to their home country or country of residence for at least two years before they can apply for a temporary work visa or for permanent residence in the U.S.. In other words, unless the two-year home residence obligation is waived, a J-1 physician is ineligible for an H-1B visa and/or permanent residence after their graduate studies.

The Conrad Visa Program waives the two-year home residency requirement for J-1 visa holders and allows an IMG to stay in the U.S. to practice in a federally designated Health Professional Shortage Area or Medically Underserved Area. The program was introduced as part of the Immigration and Nationality Act § 214(l) that was reauthorized in 1994.

To receive a J-1 visa waiver, an IMG must first secure a bona fide offer of employment from an employer that will sponsor them for a J-1 waiver and change to an H-1B status. Next, the physician must be recommended by a federal or state government agency through the Conrad 30 Waiver Program. The IMG must then submit a J-1 waiver petition to the U.S. Department of State, which reviews the application and makes a recommendation. If approved, U.S. Citizenship and Immigration Services (USCIS) also reviews the J-1 waiver application and issues a final approval. Once a waiver is granted, the IMG must work at the facility specified in the waiver application for a minimum of 3 years, unless the physician obtains approval from USCIS to transfer to another facility.

Our FOIA Request

Through a Freedom of Information Act (FOIA) submission, we requested information on all J-1 visa waiver petitions (approved and rejected) between 1995 and 2016 that were supported by a federal or state government health agency. We submitted this FOIA request to both the U.S. State department and U.S. Citizenship and Immigration Services. We based our petition on successful past FOIA submissions for information on both F1 and H-1B visas applications. Specifically, we only requested information on forms that were filled by the visa waiver applicant (DS-3035, and DS-2019/IAP-66) themselves. We clarified that the records should be

provided with a unique identifier, and no personal identifiers such as name or exact birthdate were requested. We also stated that the request was being made for scholarly and scientific purposes and not for commercial use.

Timeline

July 2017: Submission of FOIA request to both USCIS and the State Department. Different from the USCIS, a FOIA submission to the state department can be made through their [website](#).

August 2017: USCIS replies that the requested records were not under their purview. They recommended that we redirect our request to the State Department.

August 2017 - May 2019: No updates from the State Department on our request. We made several calls to their FOIA Requester Service Center (FRSC) regarding the status of our petition. Their answer was always that there was a backlog of FOIA requests and so our petition had not been reviewed yet.

June 2019: Using back channels at the State Department, we were finally received a response, but not answer we wanted. Their email stated:

“In accordance with *Ferri v. Bell*, 645 F.2d 1213, 1220 (3d Cir. 1981), federal agencies are not obligated to create, research, analyze or compile new records in response to FOIA requests. The information and statistics about visas that the State Department does organize and maintain are available in the Annual Report of the Visa Office.”

In the email, it was clarified that the Visa Office did not have the data we requested readily available and that the State Department does not have the capability to produce reports at the level of specificity we requested. However, it also mentioned that they are looking to expanding the amount and detail of publically available visa data and hopes that future changes will provide additional elements for research use.

Lessons Learned

1. The State Department is the US agency that keeps records on J1 visa waiver requests.
2. The backlog of FOIA requests at the State Department is worse than USCIS. One should expect long waiting periods for a response.
3. The State department does not keep an organized database with J1 visa waiver requests, awards or rejections. Furthermore, they are not willing to compile data records in response to a FOIA request.
4. The State Department might organize the data records on F1 visas as well as make it publicly available in the future.