

CONGRESS OF THE UNITED STATES

DELEGATION OFFICE
STATE OF NEW MEXICO
HART SENATE OFFICE BUILDING
WASHINGTON, D.C. 20510
(202) 224 - 8962

May 29, 2020

Kenneth Cuccinelli
Acting Director
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20529

Dear Acting Director Cuccinelli:

We write to express our concerns regarding efforts undertaken by U.S. Citizenship and Immigration Services (USCIS) that are negatively affecting the readiness of our nation's health care workforce during the COVID-19 pandemic. We were alarmed by USCIS's March 20, 2020 decision to suspend premium processing efforts for all Form I-129 (Petition for a Nonimmigrant Worker) and Form I-140 (Immigrant Petition for Alien Workers) petitions and believe the suspension, coupled with a failure to modify existing policies associated with the H-1B and J-1 visa programs, exacerbated physician shortages in rural and underserved areas during this public health emergency. While we are pleased to see that USCIS has taken preliminary steps towards reviving premium processing, we encourage USCIS to process these applications as quickly as possible and without any unnecessary delay.

Although the COVID-19 virus has further strained our nation's health care workforce, the problem is not new for rural and underserved areas that already lacked a sufficient number of physicians, nurses, and providers to adequately treat their patient populations. Although roughly 20% of the nation's population resides in rural areas, only 11% of physicians practice there. Thirty-one out of 33 of New Mexico's counties are designated as Health Professional Shortage Areas (HPSAs). New Mexico also has the oldest active physician population, further exacerbating access issues even before the added pressure of the pandemic.

According to the Department of Homeland Security (DHS), the Department of State (DOS), and USCIS, there were a total of 1,750 J-1 exchange visitor visas in 2018 and 1,032 H-1B visas in 2020 in New Mexico. Of the H-1B visa holders, roughly 265 are currently working in the health care sector. Additionally, the New Mexico Department of Health (NMDOH) reports that a total of 89 physicians are currently serving out their 3-year obligation through the J-1 visa program. These visa programs and related programs, such as the Conrad 30 program, have played an invaluable role in bolstering the health care workforce in rural and underserved areas. A prolonged suspension of visa processing that results in losing even one physician currently practicing in our state under one of these visa programs

would be devastating as communities are struggling to provide vital health care services to COVID-19 patients.

The New Mexico congressional delegation strongly believes that we should be encouraging, not hindering, physicians and health care workers seeking employment visas during this extraordinary time. Specifically, we believe that USCIS could quickly and positively strengthen the nation's health care workforce by:

1. Expeditiously processing all relevant petitions for health care workers;
2. Expediting all existing Employment Authorization Documents (EADs) for health care workers;
3. Modifying your "Final Guidance on When to File an Amended or New H-1B Petition After Matter of Simeio Solutions, LLC" to allow H-1B and J-1 visa holders the flexibility to move quickly to locations where their services are critically needed, like New Mexico's rural and underserved areas; and
4. Providing, from the period of April 1 – May 29, 2020 the total number of H-1B and J-1 applicants who were health care workers and the total number of applications denied.

We must not punish foreign physicians and health care providers looking to step up and serve during this crisis. We encourage USCIS and the relevant departments to take the actions necessary to enhance, not diminish, our health care presence and capacity in rural and underserved areas. The congressional delegation would be happy to work with you on this.

We thank you for your time and look forward to your prompt response.

Sincerely,

/s/ Tom Udall
United States Senator

/s/ Ben Ray Luján
United States Representative

/s/ Martin Heinrich
United States Senator

/s/ Debra Haaland
United States Representative

/s/ Xochitl Torres Small
United States Representative



U.S. Citizenship
and Immigration
Services

June 16, 2020

The Honorable Tom Udall
United States Senate
Washington, DC 20510

Dear Senator Udall:

Thank you for your May 29, 2020. In the letter, you provided recommendations for the processing of immigration benefits requests for foreign medical workers during the coronavirus (COVID-19) pandemic. Mr. Cuccinelli asked that I respond on his behalf.

The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits, including petitions for healthcare workers. As of June 1, 2020, we have resumed premium processing services for all eligible employment immigrant petitions, and we will resume premium processing for certain nonimmigrant employment petitions in phases over the next month.¹ In addition, we continue to consider special circumstances and expedite requests of individual petitions on a case-by case basis.²

In response to the COVID-19 pandemic, USCIS has announced new flexibilities for physicians in H-1B nonimmigrant status working in medically underserved areas for an agency of the federal government (Interested Government Agency, or IGA) or through the sponsorship of a state agency (Conrad State 30 program). During the public health emergency, DHS will eliminate certain immigration consequences for former J-1 exchange visitors participating in the

¹ For additional information about premium processing services, please see <https://www.uscis.gov/news/alerts/uscis-resumes-premium-processing-certain-petitions>.

² For additional information about expedite requests, please see www.uscis.gov/forms/forms-information/how-make-expedite-request.

Conrad 30 or IGA waiver programs, and currently in H-1B classification, if they engage in telehealth services or are unable to work full-time due to quarantine, illness, travel restrictions, or other consequences of the pandemic. USCIS will not consider these physicians to have violated their contracts with their employers if they are temporarily unable to work full-time due to illness, reduced hours at healthcare facilities, or other impacts related to the COVID-19 pandemic.³

Furthermore, our website provides guidance on when an H-1B healthcare worker can immediately begin to work at a new place of employment (including in an area of critical need) after a petitioner properly files an amended or new H-1B petition. In many instances, a petitioner does not have to wait for a final decision on the amended or new petition for the H-1B employee to start work at the new place of employment.

In response to your request for data about H-1B and J-1 healthcare workers from April 1 to May 29, 2020, please note that J-1 nonimmigrant visa data is maintained by the Department of State and not USCIS. For H-1B healthcare workers:

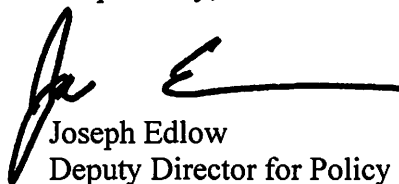
Received April 1, 2020 to May 29, 2020	Approved April 1, 2020 to May 29, 2020	Denied April 1, 2020 to May 29, 2020
1,785	2,616	48

As of mid-May, there were approximately 33,300 valid H-1B approvals for healthcare workers nationwide.

Our website and outreach efforts provide additional guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. For policy updates, operational changes, and COVID-19 information, please visit www.uscis.gov/coronavirus.

Thank you again for your letter and interest in this issue. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,



Joseph Edlow
Deputy Director for Policy

cc:

The Honorable Martin Heinrich
United States Senator

³ USCIS Policy Memorandum, PM-602-0178, *Temporary Policy Changes for Certain Foreign Medical Graduates During the COVID-19 National Emergency* (May 11, 2020).

The Honorable Tom Udall
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Member of Congress

The Honorable Debra Haaland
Member of Congress

The Honorable Xochitl Torres Small
Member of Congress