

December 20, 2018

The Honorable Samantha L. Deshommes  
Chief, Regulatory Coordination Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Ave. NW  
Washington, DC 20529-2140

Re: Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens (RIN 1615-AB71), 83 Fed. Reg. 62406; DHS Docket No. USCIS-2008-0014

Dear Chief Deshommes:

On behalf of the physician and medical student members of the American Medical Association (AMA), I am writing to provide comments to the Department of Homeland Security (DHS) in response to the Notice of Proposed Rulemaking (Proposed Rule or Proposal) on “Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens” issued by the US Citizenship and Immigration Services (USCIS). We are deeply concerned that the Proposed Rule will have a negative impact on certain non-US citizen international medical graduates (IMGs) who are seeking an H-1B visa to actively practice medicine in the US. We are also concerned that the Proposal would exacerbate the physician workforce shortage and reduce access to care for underserved communities across the US by further limiting the ability of certain non-US citizen IMGs to receive a H-1B visa, and thus we strongly urge the Administration to consider the possible unintended consequences the Proposed Rule may have on all non-US citizen IMGs.

Under the Proposed Rule, employers seeking to hire foreign employees on an H-1B visa—within the Congressionally-mandated annual caps—would first have to electronically register with USCIS during a designated registration period. While the proposed electronic registration process on its face may seem innocuous, USCIS should consider how this change would interact with the proposal to change the order by which USCIS selects beneficiaries for H-1B visas and the potential impact on highly-skilled physicians being granted an H-1B visa in a timely manner.

Under the Proposed Rule, USCIS would reverse the order by which the Agency selects H-1B petitions under the regular cap (of 65,000) or advanced degree exemption (of 20,000). Historically, in years when the H-1B cap and advanced degree exemption are both reached within the first five days that H-1B cap petitions may be filed, the advanced degree exemption is selected prior to the H-1B cap. This means that H-1B applicants with a master’s degree or higher from a US college or university first apply for one of 20,000 advanced-degree H-1B visas; then, those who are not selected go into the general applicant pool for an opportunity to receive one of the remaining 65,000 regular cap slots each year. However, reversing the selection order would mean that all applicants would compete for the first 65,000 slots. Then, any

advanced degree holders who were not selected would compete for the remaining 20,000 visas. This would be a dramatic change of course in US immigration policy. According to USCIS, changing the order by which it selects beneficiaries under separate allocations would likely “increase the total number of petitions selected under the regular cap for H-1B beneficiaries who possess a master’s degree or higher from a US institution of higher education each fiscal year, particularly in years of high demand for new H-1B visas when USCIS is likely to receive a greater number of petitions for beneficiaries who qualify for the advanced degree exemption.”<sup>1</sup> USCIS further states that the proposed selection process would result in an estimated increase of up to 16 percent (or 5,340 workers) in the number of selected H-1B beneficiaries with a master’s degree or higher from a US institution of higher education.<sup>2</sup>

We are concerned that this change may negatively impact the thousands of non-US citizen IMGs seeking to obtain an H-1B visa each year and work in rural and underserved areas of this country and further exacerbate the physician workforce shortage. An analysis of 2016 data from the US Department of Labor Office of Foreign Labor Certification (OFLC) reveals that US employers were certified to fill approximately 10,500 H-1B physician positions nationwide.<sup>3</sup> In 2016, of the 897,783 practicing physicians in the United States, 206,030 (23 percent) did not graduate from a US or Canadian medical school. Thus, the change in the H-1B visa beneficiary selection process could have the unintended consequence of limiting the ability of our non-US citizen IMGs to obtain H-1B visas, as they did not receive an advanced degree from a US institution of higher education and thus would not benefit from the changes in the H-1B selection order outlined in the Proposed Rule.

The US is facing a serious shortage of physicians largely due to the growth and aging of the population and the impending retirements of many physicians. According to recent data, the US could see a shortage of up to 120,000 physicians by 2030, impacting patient care across the nation.<sup>4</sup> Non-US citizen IMG physicians, residents, and fellows help play a critical role in alleviating this shortage by providing health care to many Americans, especially in communities in need as they tend to choose primary-care specialties and work in areas of the country with higher rates of poverty. Nearly 21 million people live in areas of the US where foreign-trained physicians account for at least half of all physicians.<sup>5</sup> As such, the impact of the Proposed Rule on this physician cohort could significantly undermine current efforts to address the worsening physician shortage and directly impact patient populations across the US considered medically underserved. Before moving forward, the Administration should evaluate the possible unintended consequences the Proposed Rule may have on all non-US citizen IMGs and ensure that these changes in policy would not disadvantage any of our foreign physicians from receiving H-1B visas. We further hope that certain hospitals and practices in rural and underserved areas (i.e., those not subject to specific cap exemptions such as nonprofits) would also not be disadvantaged by the Proposed Rule.

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<sup>1</sup> 83 FR 62408.

<sup>2</sup> <https://www.uscis.gov/news/news-releases/dhs-proposes-merit-based-rule-more-effective-and-efficient-h-1b-visa-program>

<sup>3</sup> [https://jamanetwork.com/journals/jama/fullarticle/2620160?utm\\_medium=alert&utm\\_source=JAMAPublishAheadofPrint&utm\\_campaign=17-04-2017](https://jamanetwork.com/journals/jama/fullarticle/2620160?utm_medium=alert&utm_source=JAMAPublishAheadofPrint&utm_campaign=17-04-2017)

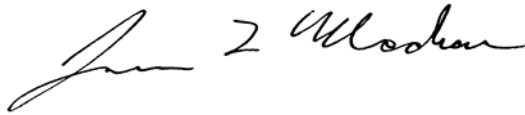
<sup>4</sup> [https://aamc-black.global.ssl.fastly.net/production/media/filer\\_public/85/d7/85d7b689-f417-4ef0-97fb-ecc129836829/aamc\\_2018\\_workforce\\_projections\\_update\\_april\\_11\\_2018.pdf](https://aamc-black.global.ssl.fastly.net/production/media/filer_public/85/d7/85d7b689-f417-4ef0-97fb-ecc129836829/aamc_2018_workforce_projections_update_april_11_2018.pdf)

<sup>5</sup> <https://www.americanimmigrationcouncil.org/sites/default/files/research/foreign-trained-doctors-are-critical-to-serving-many-us-communities.pdf>

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The AMA appreciates the opportunity to provide our comments. If you should have any questions regarding this letter, please feel free to contact Margaret Garikes, Vice President of Federal Affairs, at [margaret.garikes@ama-assn.org](mailto:margaret.garikes@ama-assn.org) or 202-789-7409.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara". The signature is written in a cursive style with a large, sweeping initial "J".

James L. Madara, MD