§ 204.12 How can second-preference immigrant physicians be granted a national interest waiver based on service in a medically underserved area or VA facility?

(a) Which physicians qualify? Any alien physician (namely doctors of medicine and doctors of osteopathy) for whom an immigrant visa petition has been filed pursuant to section 203(b)(2) of the Act shall be granted a national interest waiver under section 203(b)(2)(B)(ii) of the Act if the physician requests the waiver in accordance with this section and establishes that:

(1) The physician agrees to work full-time (40 hours per week) in a clinical practice for an aggregate of 5 years (not including time served in J–1 non-immigrant status); and

(2) The service is:

(i) In a geographical area or areas designated by the Secretary of Health and Human Services (HHS) as a Medically Underserved Area, a Primary Medical Health Professional Shortage Area, or a Mental Health Professional Shortage Area, and in a medical specialty that is within the scope of the Secretary’s designation for the geographical area or areas; or

(ii) At a health care facility under the jurisdiction of the Secretary of Veterans Affairs (VA); and

(3) A Federal agency or the department of public health of a State, territory of the United States, or the District of Columbia, has previously determined that the physician’s work in that area or facility is in the public interest.

(b) Is there a time limit on how long the physician has to complete the required medical service? (1) If the physician already has authorization to accept employment (other than as a J–1 exchange alien), the beneficiary physician must...
§ 204.12 8 CFR Ch. I (1–1–12 Edition)

(1) Are there special requirements for these physicians? Petitioners requesting the national interest waiver as described in this section on behalf of a qualified alien physician, or alien physicians self-petitioning for second preference classification, must meet all eligibility requirements found in paragraphs (k)(1) through (k)(3) of §204.5. In addition, the petitioner or self-petitioner must submit the following evidence with Form I–140 to support the request for a national interest waiver. Physicians planning to divide the practice of full-time clinical medicine between more than one underserved area must submit the following evidence for each area of intended practice.

(i) Evidence that the alien physician meets the admissibility requirements established by section 212(a)(5)(B) of the Act.

(ii) Evidence of the Service-issued waivers, if applicable, of the requirements of sections 212(e) of the Act, if the alien physician has been a J–1 non-immigrant receiving medical training within the United States.

(2) How will the Service process petitions filed on different dates?

(1) Petitions filed on or after November 12, 1999. For petitions filed on or after November 12, 1999, the Service will approve a national interest waiver provided the alien physician's work is or will be in the public interest.

(i) An attestation from a Federal agency must reflect the agency's knowledge of the alien's qualifications and the agency's background in making determinations on matters involving medical affairs so as to substantiate the finding that the alien's work is or will be in the public interest.

(ii) An attestation from the public health department of a State, territory, or the District of Columbia must reflect that the agency has jurisdiction over the place where the alien physician intends to practice clinical medicine. If the alien physician intends to practice clinical medicine in more than one underserved area, attestations from each intended area of practice must be included.

(3) A letter (issued and dated within 6 months prior to the date on which the petition is filed) from a Federal agency or from the department of public health (or equivalent) of a State or territory of the United States or the District of Columbia, attesting that the alien physician's work is or will be in the public interest.

(2) Petitions pending on November 12, 1999. Section 203(b)(2)(B)(i) of the Act

(i) In a geographical area or areas designated by the Secretary of HHS as having a shortage of health care professionals and in a medical specialty that is within the scope of the Secretary's designation for the geographical area or areas; or

(ii) In a facility under the jurisdiction of the Secretary of VA.
applies to all petitions that were pending adjudication as of November 12, 1999 before a Service Center, before the associate Commissioner for Examinations, or before a Federal court. Petitioners whose petitions were pending on November 12, 1999, will not be required to submit a new petition, but may be required to submit supplemental evidence noted in paragraph (c) of this section. The requirement that supplemental evidence be issued and dated within 6 months prior to the date on which the petition is filed is not applicable to petitions that were pending as of November 12, 1999. If the case was pending before the Associate Commissioner for Examinations or a Federal court on November 12, 1999, the petitioner should ask for a remand to the proper Service Center for consideration of this new evidence.

(3) Petitions denied on or after November 12, 1999. The Service Center or the Associate Commissioner for Examinations shall reopen any petition affected by the provision of section 203(b)(2)(B)(ii) of the Act that the Service denied on or after November 12, 1999, but prior to the effective date of this rule.

(4) Petitions filed prior to November 12, 1999. For petitions filed prior to November 1, 1998, and still pending as of November 12, 1999, the Service will approve a national interest waiver provided the beneficiary fulfills the evidence requirements of paragraph (c) of this section. Alien physicians that are beneficiaries of pre-November 1, 1998, petitions are only required to work full-time as a physician practicing clinical medicine for an aggregate of 3 years, rather than 5 years, not including time served in J-1 nonimmigrant status, prior to the physician either adjusting status under section 245 of the Act or receiving a visa issued under section 204(b) of the Act. The physician must complete the aggregate of 3 years of medical service within the 4-year period beginning on the date of the approval of the petition, if the physician already has authorization to accept employment (other than as a J-1 exchange alien). If the physician does not already have authorization to accept employment, the physician must perform the service within the 4-year period beginning the date the Service issues the necessary employment authorization document.

(5) Petitions filed and approved before November 12, 1999. An alien physician who obtained approval of a second preference employment-based visa petition and a national interest waiver before November 12, 1999, is not subject to the service requirements imposed in section 203(b)(2)(B)(ii) of the Act. If the physician obtained under section 214(1) of the Act a waiver of the foreign residence requirement imposed under section 212(e) of the Act, he or she must comply with the requirements of section 214(1) of the Act in order to continue to have the benefit of that waiver.

(6) Petitions denied prior to November 12, 1999. If a prior Service decision denying a national interest waiver under section 203(b)(2)(B) of the Act became administratively final before November 12, 1999, an alien physician who believes that he or she is eligible for the waiver under the provisions of section 203(b)(2)(B)(ii) of the Act may file a new Form I-140 petition accompanied by the evidence required in paragraph (c) of this section. The Service must deny any motion to reopen or reconsider a decision denying an immigrant visa petition if the decision became final before November 12, 1999, without prejudice to the filing of a new visa petition with a national interest waiver request that comports with section 203(b)(2)(B)(ii) of the Act.

(e) May physicians file adjustment of status applications? Upon approval of a second preference employment-based immigrant petition, Form I-140, and national interest waiver based on a full-time clinical practice in a shortage area or areas of the United States, an alien physician may submit Form I-485, Application to Register Permanent Residence or Adjust Status, to the appropriate Service Center. The Service will not approve the alien physician’s application for adjustment of status until the alien physician submits evidence documenting that the alien physician has completed the period of required service. Specific instructions for alien physicians filing adjustment applications are found in §245.18 of this chapter.
§ 204.13 How can the International Broadcasting Bureau of the United States Broadcasting Board of Governors petition for a fourth preference special immigrant broadcaster?

(a) Which broadcasters qualify? Under section 203(b)(4) of the Act, the International Broadcasting Bureau of the United States Broadcasting Board of Governors (BBG), or a grantee of the BBG, may petition for an alien (and the alien’s accompanying spouse and children) to work as a broadcaster for the BBG or a BBG grantee in the United States. For the purposes of this section, the terms:

BBG grantee means Radio Free Asia, Inc (RFA) or Radio Free Europe/Radio Liberty, Inc. (RFE/RL); and

Broadcaster means a reporter, writer, translator, editor, producer or announcer for news broadcasts; hosts for news broadcasts, news analysis, editorial and other broadcast features; or a news analysis specialist. The term broadcaster does not include individuals performing purely technical or support services for the BBG or a BBG grantee.

(b) Is there a yearly limit on the number of visas available for alien broadcasters petitioned by the BBG or a BBG grantee?

(1) Under the provisions of section 203(b)(4) of the Act, a yearly limit of 100 fourth preference special immigrant visas are available to aliens intending to work as broadcasters in the United States for the BBG or a BBG grantee.