

§ 50.4

(1) The program or activity at the applicant institution or organization in which the exchange visitor is employed must be of high priority and of national or international significance in an area of interest to the Department. The Board will not request a waiver when the application demonstrates that the exchange visitor is needed merely to provide services for a limited geographical area and/or to alleviate a local community or institutional manpower shortage, however serious.

(2) The exchange visitor must be needed as an integral part of the program or activity, or of an essential component thereof, so that loss of his/her services would necessitate discontinuance of the program, or a major phase of it. *Specific evidence* must be provided as to how the loss or unavailability of the individual's services would adversely affect the initiation, continuance, completion, or success of the program or activity. The applicant organization/institution must clearly demonstrate that a suitable replacement for the exchange visitor cannot be found through recruitment or any other means. The Board will not request a waiver when the principal problem appears to be one of administrative, budgetary, or program inconvenience to the institution or other employer.

(3) The exchange visitor must possess outstanding qualifications, training and experience well beyond the usually expected accomplishments at the graduate, postgraduate, and residency levels, and must clearly demonstrate the capability to make original and significant contributions to the program. The Board will not request a waiver simply because an individual has specialized training or experience or is occupying a senior staff position in a university, hospital, or other institution.

(b) *Waiver for members of exchange visitor's family.* Where a decision is made to request a waiver for an exchange visitor, a waiver will also be requested for the spouse and children, if any, if they have J-2 visa status. When both members of a married couple are exchange visitors in their own right (i.e., each has J-1 visa status), separate applications must be submitted for each of them.

45 CFR Subtitle A (10-1-02 Edition)

§ 50.4 Procedures for submission of application to HHS.

(a) The applicant institution (educational institution, hospital, laboratory, corporation, etc.) should send a completed application (HHS Form 426; O.M.B. No. 0990-0001) to the Executive Secretary, Exchange Visitor Waiver Review Board, Room 655-G, Humphrey Building, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, DC 20201. Application forms, instruction sheets, and information may be obtained from the Executive Secretary (202/245-6174). The application must be filled out completely and signed by an authorized official of the applicant institution. The application and accompanying materials should include information that describes in detail the circumstances of the case involved.

(b) Since the formal filing of an application for waiver with the Immigration and Naturalization Service automatically terminates the applicant's exchange visitor status, it is permissible to obtain the decision of the Exchange Visitor Waiver Review Board before filing with the Immigration and Naturalization Service.

§ 50.5 Personal hardship, persecution and visa extension considerations.

(a) It is *not* within the Department's jurisdiction to consider applications for waiver based on:

(1) Exceptional hardship to the exchange visitor's American or legally resident alien spouse or child; or

(2) The alien's unwillingness to return to the country of his/her nationality or last residence on the grounds that he/she or family members would be subject to persecution on account of race, religion or political opinion.

(b) Likewise, this Department is not responsible for considering requests to extend visas.

(c) Inquiries concerning the above should be directed to the District Office of the Immigration and Naturalization Service which has jurisdiction over the exchange visitor's place of residence in the United States.