

# Indian Doctor Wins Early Bid To Waive J-1 Residency Mandate

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Law360 (January 2, 2019, 5:38 PM EST) -- An Indian doctor will get another chance to dodge a visa requirement under the J-1 visitor exchange program mandating that she spend two years in India, after a U.S. Citizenship and Immigration Services appeals body revived her claims that her family would suffer from her departure from the U.S.

In what appears to be the agency's second sustained waiver appeal in 2018, [USCIS' Administrative Appeals Office](#) found that the doctor's spouse, a U.S. permanent resident, and her U.S. citizen children "would experience hardship that significantly exceeds" the typical suffering stemming from the temporary separation of families if the doctor is required to live in India for two years.

Under the J-1 visa program, foreign citizens may participate in graduate medical education programs in the U.S. However, under the Immigration and Nationality Act, the J-1 visa holders then must reside in their native country or country of most recent residence for two years after the exchange program ends before applying for other employment visas, including the H-1B visa for highly skilled workers, or an application for permanent residency.

In the Dec. 27 decision, the AAO remanded the case back to USCIS and instructed the director of the California Service Center to recommend to the [U.S. Department of State](#) that the doctor be eligible for a waiver of that two-year requirement. The State Department will then make its own recommendation on whether she is eligible for a waiver, weighing her hardship claims with foreign relations concerns.

"The client is not out of the woods yet, but I think this bodes well," the doctor's attorney, Brian Schmitt of Hake & Schmitt, told Law360 on Wednesday.

According to a review of the AAO's past decisions on applications to waive the foreign residency requirement, the appeals board has granted just one appeal out of the 16 decisions published in 2018. This latest decision, which has not yet been published on the AAO's website, would be the second.

“It’s extremely difficult to win appeals on this type of case,” Schmitt said.

According to the decision, the doctor had previously resided in the U.S. under J-1 status to participate in a graduate medical training program, triggering the two-year foreign residency requirement to apply for other visas after her J-1 status ran out. She asked USCIS to waive that requirement, claiming that her family would suffer exceptional hardship both by moving to India for two years and by living apart.

USCIS denied her waiver application, prompting her appeal to the AAO. On appeal, the doctor argued that her husband and children would face discrimination in India because of their Sri Lankan ethnicity and that her daughter would suffer medical hardship in India because of her asthma and eczema.

She additionally argued that her family would suffer by staying in the U.S. while she lived in India, saying that her husband would struggle to care for their daughter and infant as a single parent. She also pointed to evidence of psychological harm experienced by both her older daughter and her husband as a result of previous periods of family separation.

The doctor is represented by Brian C. Schmitt of Hake & Schmitt.

The case is Matter of A-V-, ID# 1949935 (AAO Dec. 27, 2018).

— Editing by Haylee Pearl.