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**18. Fellowship vs. Attending Position: The Big Decision**

This and the following memo probably discuss the most important issues since you have obtained residency, namely planning for the future. This memo is not a substitute for a detailed and comprehensive consultation with an attorney engaged in Immigration law, specifically a practice which deals with physicians. This memo is not meant to be exhaustive of all options, or as a substitution to speaking with an attorney.

I am very often consulted by clients and prospective clients regarding planning for the future. The main question is: “I will be finishing my 3rd year in H-1B status, and completing my residency program in June. I have the opportunity to join a fellowship, or to get a position as an attending physician. What should I do? What are my Immigration options?”

The answer varies with the individual’s personal and professional needs, which need to be balanced with the reality of Immigration Law. The answer also varies with the number of years that the fellowship program will be, as well as how many years were spent in the residency program. If the combined time spent in H-1B status in order to complete the residency and fellowship is 6 years, then the physician may have limited options to renew their non-immigrant status. The H-1B status will not be renewed unless the individual had an application for resident alien status pending with USCIS for at least one year. Time spent in H-4 status does not count against the 6 year H limit. Any time spent outside the US, after being granted H status can be recaptured. If an I-140 petition is approved before the end of the 6th year in H status or any recapture time, then the H can also be extended. If the I-140 petition has been approved and your case is affected by retrogression, then an H extension may also be available.

If your heart and mind is set on completing a fellowship, you must be mindful of the fact that if you are doing a 3 year fellowship, you may be running out of time in non-immigrant status to remain in the United States. If you have completed 6 years in H-1B status, you will be unable to renew your H-1B status except as discussed above. However, you may qualify for O-1 status. Please see the O-1 memo.

If you are doing a 3 year fellowship, for example in Cardiology, and you completed a residency in Internal Medicine, you may be able to start an application for Alien Employment Certification, based upon a position as an Internist or similarly titled position for which you are qualified, if you were able to find a position. However, you will be required to be employed in that position, once your application for resident alien status is approved. Should you change your mind, after you application for resident alien status has been approved and you have been employed for several months in that position, you should be able to change to any position, as long as you are in compliance with the terms of your contract.

If your spouse is able to proceed as a professional through this procedure, you will be able to benefit through your spouse’s case. Accordingly, if everything proceeds on a timely basis, it may not be necessary for you to depart the United States. However this will not help if you are from a country affected by retrogression. You will need your own approved employment based petition or pending case as described above, in order to extend your H status.

If you are obtaining a position from a facility that is not exempt from the Cap, then the H-1B petition will be approved with an October 1 start date. You must maintain your non-immigrant status through October 1, or USCIS will not grant an extension of status or employment authorization when the H-1B petition. USCIS rules appear to allow an individual who has filed an H with an October start date that is subject to the cap to commence employment as of the date listed on the Labor Condition Application, for example July 1, even though the H petition lists an October 1 start date. However, the doctor must leave the US and reenter with an H-1B as close to October 1 as possible and not commence employment after reentering, until October 1, or the start date listed on the H approval notice, whichever is later.

As stated in the prelude of this memo, these issues are very complicated. It is imperative that you maintain close contact with your Immigration attorney throughout your time in residency, in order to plan adequately for your future.

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