Boston Bar ASSOCIATION

16 Beacon Street
Boston, MA 02108

Phone (617) 742-0615
Fax (617) 523-0127
www.bostonbar.org

April 21, 2020

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Washington, DC 20528

Dear Acting Secretary Wolf:

As President of the Boston Bar Association (BBA), a volunteer organization of 13,000 members drawn from private practice, corporations, government agencies, legal-aid organizations, the courts, and law schools, I write to strongly urge you to take immediate measures to deploy the Department of Homeland Security's (DHS) existing statutory authority to: (1) enlist the help of non-citizen healthcare workers through grants of parole, deferred action, and discretion in the inspection process at ports-of-entry; (2) expedite the review of petitions and applications involving healthcare workers; and, (3) refrain from penalizing applicants for permanent residency who have been treated for COVID-19 with the use of public benefits. We believe these and other measures are necessary to mitigate the effects of COVID-19 pandemic on the residents of the Commonwealth of Massachusetts, citizens and immigrants alike. The COVID-19 pandemic has disrupted the daily functioning of our country in an unprecedented way. For this reason, bold and decisive action is necessary immediately.

DHS is the principal federal agency charged with oversight of the immigration system and is well positioned to leverage its authority to help communities deploy the energy of non-citizen healthcare workers. Non-citizens make up a substantial portion of the healthcare workforce and play an invaluable role in the daily lives of all Americans. In a 2018 report, the BBA noted that "twelve percent of nurses, nearly one in four doctors, and one-third of nursing, psychiatric, and home health aides are foreign-born" in the Commonwealth. The statistics are similar nationwide. Recently, the American Immigration Council found that "[n]early a third (31.8 percent) of all physicians specializing in family medicine, internal medicine, and pediatrics—three specialties associated with primary healthcare—are foreign-trained."[1] The necessity of enlisting non-citizen physicians is amplified by the Association of American Medical College, which recently predicted that "[t]he United States will see a shortage of up to nearly 122,000 physicians by 2032 as demand for physicians continues to grow faster than supply…"[2] Against this backdrop, we request that DHS take the following measures to ensure the health and safety of immigrants and the community:

[1] https://www.americanimmigrationcouncil.org/sites/default/files/research/foreign-trained_doctors_are_critical_to_serving_many_us_communities.pdf at 6.
[2] https://www.aamc.org/news-insights/press-releases/new-findings-confirm-predictions-physician-shortage

1. Direct United States Citizenship and Immigration Services (USCIS) and United States Customs and Border Protection (CBP) to work jointly to enlist the talent and energy of non-citizen healthcare professionals in the fight against COVID-19. The Immigration and Nationality Act (INA) and its implementing regulations provide DHS with a wide array of tools to recruit and retain critical healthcare workers. For example, DHS should assert its parole authority under INA §212(d)(5) to grant and extend employment authorization of healthcare workers who are in the United States without admission. Similarly, DHS should offer deferred action and extended employment authorization to healthcare workers who are present without a status. There are an estimated 27,000 to 29,000 healthcare workers who are currently protected by DACA but are at risk of losing employment authorization.[3] DHS should act swiftly to assure healthcare workers are granted individualized parole (or deferred action) with employment authorization to ensure their vital help in combating COVID-19.

Similarly, DHS should take active steps to enlist the help of international medical graduates in J-1 status who are in residency and fellowship programs. These talented physicians are generally ineligible to apply for a change of status within the United States. For example, a J-1 physician who qualifies for O-1 status is required to travel abroad, apply for an O-1 visa stamp, and then seek readmission. In light of the pandemic, these steps take precious time and expose the physician (and his or her dependents) to unnecessary risk. Instead, we propose that these physicians be allowed to go to the nearest port-of-entry and present themselves and their dependents for inspection. Existing authority at 8 CFR §235.1(a) provides that an "[a]pplication to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry when the port is open for inspection…." CBP operates ports-of-entry throughout the U.S. and at nearly every major international airport. Although these ports have traditionally served newly arriving travelers, courts have recognized that admissions are not limited to travelers arriving from abroad. *See Ramirez v. Brown* 852 F.3d 954 (9th Cir. 2017) (grant of TPS is equivalent to admission); *Flores v. USCIS*, 718 F.3d 548 (6th Cir. 2013) (same); *contra*, *Serrano v. U.S. Att'y Gen.*, 655 F.3d 1260 (11th Cir. 2011) (per curium). Valuable time can be saved by allowing physicians otherwise qualified for O-1 visa status to apply for admission at local port-of-entry without the need of international travel by directing local port directors to exercise their authority under 8 CFR §212.1(g) to waive the normal visa stamp requirement in cases of emergency.

2. Direct USCIS to reinstate its premium processing program and otherwise expedite review of petitions and applications involving healthcare workers. We join the American Medical Association[4] and others to request that USCIS resume its "premium processing" program so that hospitals and other healthcare facilities have assurance that their petitions will be reviewed quickly. Under the premium processing program USCIS guarantees review of

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[3] See https://www.nytimes.com/2020/04/02/opinion/trump-coronavirus-daca.html (visited 04/12/2020); https://www.americanprogress.org/issues/immigration/news/2020/04/03/482637/dreamers-help-keep-country-running-coronavirus-pandemic/ (visited 04/12/2020).

[4] https://searchlf.ama-assn.org/undefined/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2020-3-24-AMA-Letter-to-USCIS-re-COVID%252019.pdf

select petition types within 15 day of submission. Without premium processing USCIS review times stretch out over several months. Furthermore, we ask that USCIS expedite review of petitions and applications involving healthcare workers that are not currently included in the premium processing program.

3. Direct USCIS to clarify that it will not assess as a negative factor in its public charge determination an applicant's use or receipt of a public benefit or period of unemployment due to the COVID-19 pandemic. USCIS's current COVID-19 Public Charge statement lacks the clarity necessary to reassure applicants that they may seek treatment without reprisal. The agency states that

> "…To address the possibility that some aliens impacted by COVID-19 may be hesitant to seek necessary medical treatment or preventive services, USCIS will neither consider testing, treatment, nor preventative care (including vaccines, if a vaccine becomes available) related to COVID-19 as part of a public charge inadmissibility determination...

https://www.uscis.gov/greencard/public-charge (last visited 4/12/2020).

But in the next paragraph USCIS provides:

> The [public charge] rule requires USCIS to consider the receipt of certain cash and non-cash public benefits, ***including those that may be used to obtain testing or treatment for COVID-19 in a public charge inadmissibility determination***….

Id. (emphasis added).

To save lives and address the current public health crisis posed by COVID-19, USCIS should resolve any doubt that an individual's use or receipt of public benefits or lack of work as a result of the COVID-19 pandemic will not be a negative factor in its consideration of a totality of circumstances. It is vital that no person afflicted with COVID-19 be dissuaded from seeking treatment otherwise the entire community remains vulnerable. To meet its mission of protecting Americans, USCIS should act quickly to reassure applicants for permanent residency that receipt of public benefits or lack of work due to COVID-19 will not be used as a negative factor in assessing applications for adjustment of status.

Sincerely,

Christine Netski
President

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

May 13, 2020

Christine Netski
President
Boston Bar Association
16 Beacon Street
Boston, MA 02108

Dear Ms. Netski:

Thank you for your April 21, 2020 letter regarding immigration issues associated with COVID-19. The Secretary has asked that I respond to your letter.

The Department of Homeland Security (DHS) has no greater responsibility than ensuring the safety and security of our country. Responding to the pandemic requires everyone to work within rapidly changing, complex circumstances that create a variety of situations and conditions unique to individuals and communities.

We recognize that there are immigration-related challenges that individuals, employers, and others face as a direct result of the national emergency. We carefully analyze these issues and leverage our resources to effectively address these challenges within our existing authorities. DHS continues to act to protect the American people and our communities and is considering a number of policies and procedures to improve the employment opportunities of U.S. workers during this pandemic.

It is important for us to emphasize that U.S. Citizenship and Immigration Services (USCIS) continues to accept and process petitions and applications for immigration benefits. Our primary goal is to ensure the safety of the public and our employees as the situation evolves. Therefore, we have temporarily suspended routine in-person services at our offices. Importantly, however, our workforce continues to perform mission-essential duties that do not involve face-to-face contact with the public, and we provide emergency services for certain situations.

Our website and outreach efforts provide guidance, resources, and information to the public on the actions and policies we are implementing through these uncertain times. As we announced in our public-facing website, several options are available to nonimmigrants to extend or change their status. For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

While Congress has granted DHS extensive statutory authority, it has also prescribed specific statutory limitations regarding many nonimmigrant visa programs, including in relation to extensions of status. I should note that when similar concerns arose in the aftermath of the 9/11 terrorist attacks, Congress passed legislation providing relief to impacted legal aliens. Section 422 of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001," Pub. L. No. 107-56, provided automatic extensions of status, but only to those nonimmigrants lawfully present in the United States on September 1, 2001 who had been disabled as a result of the terrorist attacks (and family members). Such aliens could "remain lawfully in the United States in the same nonimmigrant status until the later of . . . the date such . . . status otherwise would have terminated . . . or 1 year after . . . the onset of disability . . . ." For those lawfully present nonimmigrants who had not been disabled, Congress provided only that "if the alien was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a specified terrorist activity, the alien's application shall be considered timely filed if it is filed not later than 60 days after it otherwise would have been due." The House of Representatives passed similar legislation on a bipartisan basis by voice vote in the aftermath of Hurricane Katrina. *See* H.R. 3827, the "Immigration Relief for Hurricane Katrina Victims Act of 2005."

Thank you again for your letter and interest in this important matter. We will consider the recommendations you have put forward.

Sincerely,

Joseph Edlow
Deputy Director for Policy