

PERMANENT RESIDENCE FOR NURSES

By David Fullmer

In recent years the U.S. healthcare system has suffered a chronic shortage of nurses – and this trend promises to worsen as the population ages. Recognizing the opportunity, caring and qualified nurses from around the world have heeded the call to duty. For many, living in the U.S. and working in the nursing profession has been a lifelong dream. U.S. healthcare institutions, for their part, are grateful for the extra assistance to fill the gap. Yet complying with the processes and procedures for a successful nursing visa can be confusing. Adding insult to injury, the visa category for nurses has retrogressed. Qualified nurses (just like many other qualified professionals applying for visas) must wait in line, sometimes for months or years.

“SCHEDULE A” OCCUPATIONS

For most employment-based categories of green cards, the process starts with a labor certification. During labor certification, an employer tests the U.S. labor market to be sure that there are no willing, qualified and able U.S. workers available to fill the position. The employer then submits its findings to the Department of Labor, which in turn certifies that no U.S. workers are being displaced and a foreign-born worker may fill the position. In 1996, legislation was passed designating nurses as a “Schedule A” occupation. Congress recognized that there was already an ongoing and bona fide shortage of nurses in the U.S. – and not enough U.S. nurses to fill employers’ needs. Hence, the labor certification process was no longer required for nursing positions. Schedule A is a limited exception, though. It applies only to professional nurses (not to nursing assistants, caregivers or other healthcare workers in serious shortage) and to physical therapists.

TIMING ISSUES

Since nurses do not have to go through

the onerous labor certification process, they can sometimes apply directly with the USCIS. In the past, if a qualified nurse was present in the U.S., this made it easy for her to seek out an employer and begin work right away. Often this was the preferred strategy – a qualified foreign-born nurse would arrive in the U.S. as a visitor, find an eager employer to file paperwork for her, and begin working within a few months.

Since visa numbers for nurses have retrogressed, things have gotten a bit more complicated. If a nurse is here in the U.S., she must be here in a valid nonimmigrant status – not an easy thing to do, since nonimmigrant visas for nurses are rare. If the nurse is outside of the U.S., connecting with a deserving employer here in the States can be logistically quite difficult, especially when an employer has no guarantee when the foreign nurse will be able to report to work. Still, the need for qualified nurses is so great that many U.S. healthcare institutions continue to sponsor them in great numbers. There have also been efforts to raise the annual numbers of visas allotted for nurses.

HOW TO APPLY

Although the need for qualified nurses is serious, common-sense emphasis must be placed on the word “qualified.” The immigration process for nurses, although it may seem Byzantine, has been established for just this purpose – to ensure that the nurses being brought to the U.S. are technically qualified, properly licensed and documented, and proficient enough in English to understand complex instructions. The USCIS has authorized an independently-run program known as VisaScreen to accomplish this.

A nurse considering employment in the U.S. should first make sure to possess:

1) a diploma from a nursing school in



her country; 2) a RN license in her home country; and 3) a full, unrestricted license to practice nursing in the state of intended employment in the U.S., or a certification issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or evidence that she has passed the NCLEX-RN licensing examination but cannot obtain a license because she lacks a social security number.

More information on CGFNS and VisaScreen is available at www.cgfns.org; information on NCLEX-RN is available at www.ncsbn.org. There are now 18 international NCLEX testing sites, including the Philippines, Australia, England, and Hong Kong. Once it has been determined that the nurse is able to (or will very soon be able to) meet VisaScreen requirements, the employer files a Form I-140, Immigrant Petition for Alien Worker (with filing fee, of course) with USCIS.

The employer must also include Form ETA 9089, Application for Permanent Employment Certification (since nursing is a Schedule A occupation this form only needs to be filled out for informational purposes – no labor certification is actually filed); a prevailing wage determination and posting notice. Care must also be taken to respect and work with nursing unions in many hospitals.

Cont'd Over

If the nurse is outside of the U.S., when the USCIS approves the Immigrant Petition it is forwarded to the National Visa Center (NVC). The NVC acts as a liaison between the USCIS here in the U.S. and the consulate abroad. The NVC will send the nurse (or the attorney) "visa fee bills" and instructions on how to begin preparing for the visa interview at the consulate. There will be visa fee bills issued for each member of the family who will immigrate with the nurse. Often the NVC will help the consulate by asking for certain documents up-front, such as visa application forms or original copies of birth and marriage certificates. It can take many months for an immigrant visa to become available (in other words, for the priority date to become "current"). It can take several more months for an interview to be scheduled at the consulate.

At the visa interview, the nurse should come equipped with the following:

1. Applications for Immigrant Visas;
2. Police Certificates;
3. Birth Certificates;
4. Marriage Certificate, if applicable;
5. Divorce or Death Certificate of Spouse, if applicable;
6. Passports;
7. Medical Examinations;
8. Photographs;

9. Recent job offer letter from the U.S. employer or copy of the employment contract;
10. Proof of employer's financial status; and
11. VisaScreen Certificate.

After a successful visa interview, the nurse and her family may enter the U.S. as lawful permanent residents (green card holders) and the nurse may begin work immediately with her new employer.

If a nurse is already lawfully present here in the U.S., she may take the NCLEX-RN test in the U.S. in any state and file for "Adjustment of Status." In Adjustment of Status, many of the same documents that would be presented at the consulate are instead mailed to the USCIS here in the U.S. The nurse may then remain in the U.S. until her green card is approved.

Disclaimer: Nothing on these pages should be taken as legal advice for any individual case or certain situation. The information is general and should not be relied on upon for any specific situation. For legal advice, please contact one of our attorneys.

All content is copyrighted by © IVENER & FULLMER LLP 2008. All rights reserved. Services relating to immigration and naturalization provided by Ivener & Fullmer LLP are provided by active members of the State Bar of California or by a person under the supervision of active members of the State Bar of California.

