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IMMIGRATION BLUES

BAD NEWS FOR DOCTORS, GOOD NEWS FOR RELATIVES

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Two significant Acts amending the U.S. immigration law took effect early this month. The first Act, known as the Immigration and Nationality Act Amendments of 1976 and signed into law by President Ford last October 20, 1976, became effective on New Year's day. The second, known as the Health Professions Educational Assistance Act and signed into law last October 12, 1976, took effect on January 12.

Conceded to be comprehensive in scope and far reaching in effect, the new Acts promise to change the pattern of immigrtion into this country for the last quarter of the century.

WESTERN HEMISPHERE ACT

The principal purpose of the immigration amendments is to equalize the treatment between natives of the Western Hemisphere (South and Central America and Canada) and the natives of the Eastern Hemisphere (all other countries including the Philippines). Thus it was commonly referred to as the "Western Hemisphere Bill." Substantial changes, however, also apply to Eastern Hemisphere aliens. Among the highlights of the Act are:

• The preference system that has governed the immigration of Eastern Hemisphere natives is now extended to the Western Hemisphere. Under the old law, Eastern Hemisphere natives were subject to a numerical limitation of 170,000 with a per country limitation of 20,000. The 20,000 visa numbers were distributed in accordance with certain maximum percentages for seven preference categories in the chronological order in which they qualified. This manner of visa allocation now applies to the Western Hemisphere.

• Visa numbers will be allocated on a pro rata basis throughout the preference categories for each country that used up the maximum visa numbers during the preceding fiscal year. This means, for example, that if for the first fiscal year the 20,000 maximum is oversubscribed by any country, like the Philippines, the next fiscal year will be governed by a formula of allocating the 20,000 numbers not only to the first, second and third preferences as is the case presently with the Philippines but also to the fourth, fifth, and sixth and seventh preferences, and even, possibly, the non preference category.

Under this new system of pro rata allocation, U.S. citizens who are at least 21 years old are no longer discouraged from petitioning their married sons and daughters (4th preference), and their married or unmarried brothers and sisters (5th preference). The same is true with unskilled workers in short supply (6th preference) and retirees and investors (non preference).

• Adjustment of status is made available to natives of both Eastern and Western Hemispheres. However, this privilege is denied to any alien (except immediate relatives) who continues in or accepts unauthorized employment prior to filing an application for adjustment of status. Also, an immigrant visa has to be available at the time the application is filed (instead of at the time of approval).

• All members of a profession, or aliens of exceptional ability in the arts and sciences, in order to qualify for preference visa classifications, are required to have prearranged employment. All persons thus need offers of employment in order to quaify for third preference.

DOCTORS' EXCLUSION LAW

The health professions law is known in certain quarters as the "Doctors' Exclusion Act." It asserts in its declaration of policy that "there is no longer an insufficient number of physicians and surgeons in the U.S. and that there is no further need for the admission of alien physicians and surgeons under the Immigration and Nationality Act."

Under this Act, foreign medical graduates coming here primarily to perform medical services are excluded from becoming immigrants unless they have passed Parts I and II of the National Board of Medical Examiners examination (or its equivalent as determined by the Secretary of Health, Education and Welfare) and are competent in oral and written English. The exclusion specifically applies to third and sixth preference immigrants and to non preference immigrants.

This means that any foreign medical graduate who did not obtain his green card last January 9 (or at least, according to the General Counsel of the Immigration and Naturalization Service, has not filed his application for adjustment of status) will be denied an adjustment of status if he has not passed the NBME exam or its equivalent. This is so despite the fact that his approved petition dates back to as early as 1970.

The non-immigrant provisions which has been availed of by foreign medical graduates, namely H (temporary worker or trainee) and J (exchange visitor) are no longer open to foreign medical graduates coming here temporarily to perform services or to receive graduate medical education or training. The only exception applies to an H-1 applicant who is coming here at the invitation of a public or non profit private educational or research institution in the U.S. to teach or conduct research.

On the other hand, the J-1 visa will be limited to those that comply with the following requisites:

• A school of medicine (or other accredited health professions school) and an affiliated hospital have agreed in writing to provide appropriate training.

• The foreign medical graduate has passed Parts I and II of the National Board of Medical Examiners examination (or an equivalent examination as determined by the Secretary of HEW), has competency in written and oral English, will be able to adapt to the educational and cultural environment, and has adequate prior education and training to participate in the training program for which he is coming.

• He has made a commitment to return to his country and his country has given a written assurance that upon the completion of his training he will be appointed to a position there in which he will fully utilize the skills acquired.

• He will stay no more than two years, subject to an extension for one additional year at the written request of the home country government and, with the written approval of the medical school.

The above requirements for the J-1 applicant may, however, be waived if otherwise there would be a substantial disruption in the health services provided by the graduate medical education program in which the alien seeks to participate. But this waiver is subject to the proviso that the total number of aliens participating in graduate medical education programs at any time, shall not, because of the waiver, exceed the number of such persons participating on January 10, 1977.

[Editor's Note: Mr. Reuben S. Seguritan is an attorney and member of the Philippine and New York bars.]