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Questions and answers

New guidelines up on visa petitions

By REUBEN S. SEGURITAN

The US Immigration and Nationality Act is a confusing piece of legislation that even immigration lawyers and officers of the Immigration Service do not have quick answers to seemingly simple questions posed by aliens. This is especially so in the case of recent enactments and P.L. 94-571, otherwise known as the Immigration and Nationality Act of 1976.

To clear some of the uncertainties created by the new law, the Immigration Service recently issued guidelines in the form of question and answer. It made the caveat, however, that they were premised on proposed regulations of the Department of Labor and of the Service, and would, therefore, be subject to modification in accordance with the changes in those regulations as finally adopted.

This week we reproduce the guidelines pertaining to the changes in the preference categories as they relate to the Eastern Hemisphere to which the Philippines belongs.

What modifications in the preference categories are effected by P.L. 94-571?

Third preference classification for members of the professions and persons of exceptional ability in the sciences and the arts is amended to require that their services be sought by an employer in the United States; the fifth preference category is amended to require that a United States citizen must be at least 21 years of age in order to file a visa petition on behalf of a brother or sister.

Will a third or fifth preference visa petition filed prior to but pending with a Service office on January 1, 1977, be subject to the provisions of P.L. 94-571?

No, the entitlement to immigrant status on the basis of a petition filed prior to January 1, 1977 is preserved by the savings clause of section 9 of P.L. 94-571. The petition will be adjudicated under the law and regulations in effect prior to January 1, 1977.

Since the services of the beneficiary of a third preference visa petition must be sought by a U.S. employer, can an alien still file a third preference visa petition on his own behalf on and after January 1, 1977?

Yes, however, in addition to the other required supporting documentation, the Form I-140 must also be supported by the Department of Labor Job Offer for Alien Employment form (MA7-50B).

In view of the foregoing, will a third preference visa petition be filed with the Service office having jurisdiction over the intended place of residence of the beneficiary or over the beneficiary's intended place of employment?

On and after January 1, 1977, a third preference visa petition shall be filed with the Service office having jurisdiction over the beneficiary's intended place of employment.

(Editor's Note: Mr. Seguritan is an attorney and member of the Philippine and New York bars. He will discuss important legal developments in this column weekly).

Dear Sir:

I have read your article regarding the availability of visa numbers for fifth preference. I am so happy to hear about this good news. Nevertheless I would like to know the source or your source of information. Please let me know your source of information so I could likewise inform my sister about the good news.

Thank you.

Very truly yours,

Flora O. Mercado
799 Connetquot Ave.
Islip Terrace, NY 11752

Mr. Seguritan replies:

The information was contained in Public Law 94-571 which was signed by President Ford on October 20, 1976 and which took effect on January 1, 1977. After the signing of the law, the Department of State cabled all American diplomatic and consular posts regarding the orderly implementation of the provision. Portions of the instruction read: "On October 1, 1977, the provision of law will become effective requiring pro rata allocation of visa numbers throughout the preference classes for natives of a foreign state... which has reached its limitation of 20,000... in the previous year. The effect of this provision will be to make some visa numbers available to natives of such foreign states... in every preference classes..." (underscoring mine).

Dear Sir:

I am an American citizen thru naturalization. My whole family is in this country except for my married sister, who is still in the Philippines. In which preference will be our best choice, me sponsoring her, or my father who will be a citizen next year?

Thank you very much.

Respectfully yours,

Lolita Navarro Kochmer
128 Jacksonville DR.
Parsippany, NJ

Mr. Seguritan replies:

The married daughter of an American citizen falls under the fourth preference while the sister of an American citizen is covered under the fifth preference. Under the preference system, the 20,000 visa numbers annually allotted to the Philippines are distributed in the order of the preference classes and within the preference classes in the order of their priority dates. Hence, fourth preference beneficiaries are served ahead of fifth preference aliens. Under the new system of pro rata allocation, there will be at least 2000 numbers available to the fourth preference while at least 4800 will go to the fifth preference (assuming of course that the Philippines will remain oversubscribed in 1977). In the case of an alien, like your sister, the fourth preference will normally be the better choice, but inasmuch as your father is not yet a citizen, the fifth preference may be availed of right away. Note however, that it is permissible to apply under more than one preference category.