Filipino Reporter
FAIR, FEARLESS, FACTUAL
September 2-8, 1977

Message to White House: Treat our people fairly

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(First of two articles)

There are now some 530,000 Filipinos in the United States today, according to records of the Census Bureau and the Immigration and Naturalization Service. While some of them came to this country even before 1765 when they settled in Louisiana, most of them migrated in the twentieth century. The latest and most massive wave of migrants, composed mostly of professionals, such as doctors, nurses, engineers, accountants and teachers, came to this country after 1950.

Unfortunately, many of them are not yet permanent residents. A number of factors have contributed to this ironic situation. On one hand is the low quota available to Filipinos. Unlike other countries which have been the beneficiaries of special legislation granting permanent resident status to thousands, the Philippines has never received immigrant visas beyond the limited quota fixed in the general immigration laws. In 1953, only 100 immigrant visas were allowed annually, and this number was increased to 20,000 yearly only in 1965, when the national origin formula was replaced by the system of preferences. On the other hand is the strong urge among Filipinos to immigrate, influenced by the deep historic and sentimental ties between the two countries, that had developed during the fifty years of American presence in the Philippines.

It may be said that the principal factor pulling the Filipinos to migrate to this country is the nature of their skills and training. Because of American influence even after 1946, Philippine education was geared toward the development of skills needed by the United States. It was not a coincidence that when the United States badly needed doctors, nurses, engineers, accountants and teachers in the 1950s up to the early 1970s, the Philippines was turning out more of these professionals than it could afford to employ. Many of the U.S. recruits came from the Philippines.

PROPOSAL NO.1 - ALL FILIPINOS WITH APPROVED PETITION SHOULD BE GRANTED IMMIGRANT VISAS IMMEDIATELY.

Today, these Filipino professionals have decided to stay in the United States, because they have already established certain equities in their employment, business, or even in their personal affairs. Moreover, the Philippines, which has a basically agricultural economy, has no room for all of them. This dilemma accounts for the huge backlog of Philippine cases awaiting visa numbers.

But one significant feature distinguishes the Filipinos from the other aliens. Most of them are already the beneficiary of an approved preference petition or non preference petition. The underlying philosophy of the U.S. immigration system has a two-fold objective; reunification of families and encouragement of needed skills and talents. The Filipinos, as evidenced by their approved visa petitions, possess the necessary family relationship or skills to satisfy this objective.

The latest estimate from the Immigration and Naturalization Service show that there are some 120,000 Filipinos who have qualified under the current immigration standard and are now awaiting visa numbers. Below are the figures for each preference and the total number allocated annually. (See table above)

Based on the above figures, it will take a brother of an American citizen (fifth preference) thirteen years to receive his visa number. Add one year for processing time and the length of time for him to become a permanent resident is fourteen years. In the case of a Filipino doctor or a nurse under the third preference, it takes about twelve years.

Compare these figures with those of the Japanese, Malaysians, Arabs or Europeans, A Malaysian nurse who applied last year would certainly have obtained her green card by now.

Under the foregoing discussion, although the Philippines receives the same number of visa as any other independent country, the system operates to exclude a great number of qualified Filipinos from becoming immigrants. This has brought extreme hardship in that certain economic and social rights are withheld from them. On the other hand, they have contributed in myriad ways to the social and economic benefit of the nation, in the same way as permanent residents or even citizens.

I therefore propose that all Filipinos who are the beneficiary of an approved preference or non preference petition should be granted immigrant visa immediately.

History has a precedent for this kind of visa dispensation. Several years ago, Italians did have to wait in the same fashion and Congress decided to wipe out the waiting list so that an Italian intending to immigrate did not have to wait for a lifetime. Those who were thus awaiting visa numbers were granted exemption from the quota.

PROPOSAL NO.2. THE TWO-YEAR FOREIGN RESIDENCE REQUIREMENT AND THE REQUIREMENT TO PASS VISA QUALIFYING EXAMINATION IMPOSED ON PHYSICIANS SHOULD BE ABOLISHED.

The medical profession is the only profession that has become the object of "unusual legislation." And the Philippines is the country that is most adversely affected. The first major obstacle to a permanent resident status for alien physicians is the two year foreign residence requirement. The second is the Visa Qualifying Examination (VQE).

The two year foreign residence requirement as provided for in Section 212 (e) of the Immigration and Naturalization Act states that an alien physician coming to the United States as an exchange visitor cannot adjust his status to that of a permanent resident unless he has resided in the country of his nationality or his last residence for at least two years. Under this rule, a Filipino surgeon with an established medical practice, who is married to an American citizen and with two children born in the United States, generally is required to go back to the Philippines and reside therein for at least two years before he can apply for permanent resident status.

The requirement has its roots in 1948 when the Smith-Mundt Act created the Exchange Visitor non immigrant category. This paved the way for the recruitment of foreign medical graduates (FMG) for internship and residency positions. Immigration policy then, as it still is, was contingent on America's need for manpower.

It was the fastest and most inexpensive way to respond to the shortage of physicians in this country. American medical education was costly and there were not enough American medical graduates available.

Many Filipino physicians came to this country in response to that need. On December 31, 1970, there were 7,352 of them who were here in the U.S., the highest number for any single nation, and about twice as many as the Indians who ranked second. Most of these doctors come as exchange visitors.

The hardship that the Filipino physicians have undergone because of the requirement need not be documented. Theoretically, there are grounds for waiving the requirement but these grounds are extremely difficult to establish.

The justification given for the requirement has been that it is in compliance with the objectives of the Exchange

In replying to this proposal, Mr. Stuart Eizenstat, President Carter's chief domestic adviser, said, in effect: A general review of the entire immigration policy and regulations is under way.

ESTIMATE OF HOW SECTION 202 (e) WILL AFFECT PHILIPPINE NUMBERS FY -1978

PREFERENCE	PERCENTAGE LIMIT	AVERAGE ANNUAL DEMAND	FALLDOWN FROM HIGHER PREFERENCE	NUMBERS AVAILABLE	ALLOCATION
A. 1st PREF.	20% = 4000	420	3580	4000	420
B. 2nd PREF.	20% = 4000	16,200 (BACKLOG)		7580	7580
C. 3rd PREF.	10% = 2000	22,296 (BACKLOG)		2000	2000
D. 4th PREF.	10% = 2000	13,060 (BACKLOG)		2000	2000
E. 5th PREF.	24% = 4800	61,876 (BACKLOG)		4800	4800
F. 6th PREF.	10% = 2000	3,690 (BACKLOG)	1200	2000	2000
G. 7th PREF.	6% = 1200			1200	-
H. NONPREF.	0% = --	1,858 (BACKLOG)		1200	1200
TOTALS	100% = 20,000				20,000

Visitor Program. Foreign physicians are supposedly here to gain knowledge and experience and they are expected to apply them in their respective countries of origin after their training.

The above arguments do not square with the realities. Physicians have come to this country to fill a void. They came here, primarily, to work and staff the hospitals, and, secondarily, to train. Thus the Internal Revenue Service treats their income not as educational grants but as salaries.

The doctors themselves came here under the impression that they would work and earn a living and, incidentally, to train. Until recently, they were never seriously and properly appraised of the two year foreign residence requirement.

But, granting for the sake of argument, that they came here as students, should not the subsequent emergence of certain equities be reason enough to exempt them from the requirement? Why should the Filipino surgeon with an American child be forced to leave this country and his child just to comply with the requirement? Will this not adversely affect his family relationship? Also, why should the doctor be forced to leave his medical practice? Will this not mean hardship to him aside from depriving his patients of his needed services?

But the unjust aspect of the requirement is the way it has been manipulated to suit certain narrow interests. In 1970, for instance, the U.S. Congress relaxed the requirement because it had been engendering difficulties in its administration and producing hardship on the hospitals that could not get enough physicians after many foreign medical graduates had gone home to comply with the requirement. Also, on April 11, 1975 the Educational Commission for Foreign Medical Graduates (ECFMG) threatened to discontinue sponsorship of FMGs who had filed their third or sixth preference petitions. The abortive threat could have sent home an estimated one thousand Filipino medical graduates even without finishing their training.

I therefore propose that the foreign residence requirement for physicians be abolished, or, at least, its application be limited to those who cannot prove the existence of certain equities such as family relationship or the establishment of a medical practice.

With respect to the Visa Qualifying Examination, foreign medical graduates are now required under PL 94-484 to pass the newly instituted Visa Qualifying Examination before they could become eligible for immigrant visas. Additionally, the exam is a prerequisite to those coming to the U.S. for graduate medical education.

This new limitation puts the foreign medical graduate among the class of excludable aliens that includes anarchists, lunatics and criminals.

The requirement imposes an unnecessary and extremely unfair burden on the foreign physician. It should be noted that before a physician is admitted here for training, he must have passed a one day examination known as the ECFMG examination. Before he is allowed to practice, he must have passed the three day Federal Licensing examination (FLEX). And before he is certified as a specialist, he must have passed the Specialty Board examination. And yet even if the foreign medical graduate has successfully passed these three exams, he cannot become an immigrant unless he passes the so-called Visa Qualifying Exam, a two day exam. He is also required to pass an English test.

The logic behind the requirement is questionable. Congress in passing the law, declared that "there is no longer an insufficient number of physicians and surgeons in the United States and that there is no further need for the admission of alien physician and surgeons."

Yet even before the Act could take effect on January 10, 1977, hospitals all over the country were already talking about a medical crisis if the rules were not liberalized. The Department of Health Education and Welfare conceded a fifteen to twenty percent reduction in the number of FMGs available if the new law was implemented.

During the congressional debates, the passing of said exam was considered as a justified requirement in that it would guarantee the competence of foreign medical graduates in practice. But how could they consider a foreign medical graduate, who has already passed the ECFMG exam, the FLEX exam and the Speciality Board exam, as incompetent?

The most unfair feature of the new law is its applicability to foreign medical graduates who have been here in the U.S. even before 1970, and who in fact have been practicing since then. These are mostly Filipinos who have already obtained visa preference classifications but have been waiting for their visa number for several years now. The absence of a savings clause in the law subjects these doctors to the Visa Qualifying Examination.

I propose that the new requirement to pass the Visa Qualifying Examination be abolished and that Congress withdraw its declaration that there is no longer and insufficient number of physicians in the USA. As an alternative, the FLEX should be considered as meeting the requirement and that it does not apply to those who are the beneficiaries of approved third, sixth or non preference petitions with a priority date earlier than the effectivity of the new law.

There is a misleading issue to the FMG problem and it is the way the American medical establishment ties up visa limitation with what it describes as the "incompetence" of the FMG. As can be gleaned from the legislative history of PL 94-484, the "questioned quality of care provided by graduates of foreign medical schools both in terms of their ability to relate to their patients and their medical competence" influenced the Congress to vote for the anti-FMG measure.

The characterization is most unfair. Even the task force of the American Medical Association's now-defunct Committee on Housestaff Affairs reporting in July 1974 said: "There is no hard evidence to substantiate the charges of general incompetency among foreign medical graduates." This task force in effect contended that the test scores of FMGs in examinations is a misleading index to the level of their competence. This is not to mention their heavy clinical commitments and long work hours, making their preparation for the exam extremely limited in time. The same conclusion was reached by a study published in the New England Journal of Medicine on January 16, 1975, by a group of researchers from the Yale University Faculty of Medicine. The study concluded that the factors unrelated to competence—namely visa-citizenship status and state of examination—are associated with the holding of a license and that the quality of medical education is not an accurate predictor of licensure.

PROPOSAL NO. 3
NURSES SHOULD BE ALLOWED TO WORK HERE FOR AT LEAST FIVE YEARS FROM THE TIME OF THEIR ENTRY AND THAT EMPLOYERS PAYING LESS THAN THE REGULAR WAGE SHOULD BE PENALIZED

Foreign nursing graduates are a clear case of injustice because of their immigration problem. A typical situation is illustrated as follows: A nurse is recruited to work in a New York hospital. New York law grants temporary licensure to nurses for a term of one year without renewals. She comes here under and H-1 visa. If she does not pass the licensure exam within a year, she loses her visa as well as her job.

Passing a licensure exam within a year is a slim possibility. She has to take it within six months from her arrival. During these months, aside from experiencing the new changes in her environment, she has heavy work commitments. She prepares for the exam therefore under extremely limited time, not to mention the pressures from her job and the threat of an uncertain future. In addition, the examination questions are framed in an unnecessarily complex language which is indicative of cultural bias. This explains their low passing percentage (12 percent in New York and 22.5 percent nationwide in 1970-1972) in contrast with the high passing percentage among American graduates.

If a nurse fails the exam, she may be discharged. If the motive or impact of such refusal to employ is discriminatory, the employer may easily invoke the immigration law as justification.

If the employer desires to keep the nurse in his employ, he may do so. Under such a working arrangement, the nurse cannot officially function as a Registered Nurse because that would be in violation of the State's licensure laws. She is, therefore, classified as a nurse's aide. Because she is a nurse's aide, the employer pays her a low wage. If she is assigned responsibilities that are comparable to her previous professional functions, this would be exploitation, but again the employer has a ready justification which is the state licensure laws.

This dehumanizing condition under which a foreign nursing graduate comes here and works becomes even more gross if considered with the circumstances behind her coming here. She spent a thousand dollars for her transportation alone and by the end of one year when she becomes deportable, she may not have even saved enough to pay for that amount.

To correct this kind of exploitation which is made possible by the limited duration of their H-1 visa, I propose that the nurses should not be required to leave the country earlier than their fifth year in the U.S. The employer paying less than the average wage for nurses should also be penalized.

CONCLUSION

In closing, let me say in the words of President Kennedy: "Immigration policy should be generous; it should be fair; it should be flexible. With such a policy we can turn to the world and to our own past, with clean hands and a clear conscience. Such a policy would be but a reaffirmation of old principles..."