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

UPDATING IMMIGRATION

Doctors can't file for sixth preference visas

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While the sixth preference route to an immigrant visa has been opened since October, 1977 to both skilled and unskilled workers in short supply in the United States, thus affording qualified aliens to obtain their green cards within a short period of time, it h as been practically closed to medical doctors.

This unfair situation was created by the anti-Foreign Medical Graduates (FMG) law that took effect on January 10, 1977. Under that legislation, foreign medical graduates are required to pass the Visa Qualifying Exam (VQE) as a condition for obtaining an immigrant visa and for admission into the United States.

Reacting to criticisms, the US Congress subsequently modified the requirement by exempting from the VQE any foreign medical graduate who (1) on January 9, 1977 was a doctor of medicine fully and permanently licensed to practice medicine in a state; (2) held on that date a valid specialty certificate issued by a constituent board of the American Board of Medical Specialties, and (3) was on that date, practising medicine in that state.

Also exempted were physicians of "national or international renown" and graduates of medical schools accredited by a body approved by the Commissioner of Education.

The aforementioned relaxation of the law did not, however, afford much relief to the alien doctors. Under the first exempted category, for instance, if the doctor obtained a specialty certificate anytime after January 9, 1977, he would still be required to take the VQE. And even if he got a specialty certificate on or before January 9, 1977; but had not yet been fully and permanently licensed to practice medicine, he would not be exempted.

The second exempted category also did not help much because there was no definition given to the term "national or international renown." As to the third exempted category, the ECFMG ruled that there is no accredited medical school in the Philippines.

As the law now stands, only physicians who have passed the VQE or who are exempted from the VQE as discussed above are allowed to file a sixth preference visa petition.

Why should an FMG who has not passed the VQE or who is not exempted from the VQE be barred from applying for labor certification in connection with a sixth preference visa petition? The law states that the VQE is only required as a condition for obtaining a visa and for admission into the US, and not as a condition precedent to obtaining a labor certification.

The Labor Department in its rules and regulations that took effect on July 11, 1977 stated that the labor certification and the passage of an appropriate examination are so closely related as to warrant their merger in the administration process.

It cited the following reasons to support its contention: (1) Both the passage of the examination and the obtaining of a labor certification are statutory conditions precedent for the receipt of visas by, and for the admission of certain medical personnel; (2) The qualification by examination of such medical personnel is directly related to the legal ability of these aliens to engage in the occupations for which labor certifications are requested; and (3) The processing of labor certification applications on behalf of such medical personnel who are subsequently unable to pass the necessary examination will unnecessarily burden the administrative process.

Until the VQE law is repealed or until a proper court voids the Labor regulations of July 11, 1977, physicians will continue to be the victims of discrimination.