

# Filipino Reporter

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## WHO MAY GET DEFERRED VOLUNTARY DEPARTURE STATUS?

By **REUBEN S. SEGURITAN**

**How many months will a nurse be allowed to stay in the United States?**

The nurse who meets all the conditions as stated above will be given deferred voluntary departure status in six-month increments up to a total that does not exceed three years from the date of arrival in the United States. For instance, if a nurse has been here for six months, he/she may be granted a deferred departure of six months with four extensions of six months each or up to a total of thirty months.

**Suppose a nurse has been here for 36 months and has failed all the licensure, may he/she be granted deferred voluntary departure?**

Yes. He/she shall be allowed six months to stay for the purpose of taking the exam.

**Suppose a nurse has been here for three and a half years, but has not yet passed the exam, may he/she be granted deferred voluntary departure status?**

No. However, INS Commissioner Castillo has informally agreed to review such case paying particular attention to the "hardship" factor.

**During the period when the nurse is allowed to stay, shall he/she be permitted to work?**

Yes. He/she shall be permitted to work in a lesser capacity than professional nurse, like LPN or nurse's aide. If he/she works as an LPN or nurse's aide, the employer is not supposed to give him/her the responsibilities of a Registered Nurse.

**If a nurse who has been allowed to stay eventually passes the exam, may he/she be restored to H-1 status?**

Yes. But he/she has to look for an employer who will petition him/her as an H-1 nurse. Upon approval of said petition, the INS will then restore the nurse to H-1 status.

**What may a nurse who is under deportation proceedings do to be granted a deferred voluntary departure status?**

If he/she is under deportation solely because of his/her change of employment without INS authorization or because of his/her previous inability to pass the exam, the nurse or his/her attorney may ask for deferred voluntary departure during the hearing upon proof that he/she meets all the conditions set forth in the agreement. However, if he/she does not pass the licensure exam within the maximum period of deferred voluntary departure, the deportation proceedings will be resumed.

**If the nurse subsequently passes the exam, may the deportation proceedings be terminated?**

Yes. Upon the presentation of an RN license by the nurse or his/her attorney, the INS will move to terminate the deportation proceedings with a view to restoring his/her H-1 status.

**Is there any time limitation imposed for making an application for the above benefits?**

Yes. Any nurse who fulfills all the conditions for the grant of deferred voluntary departure status or for restoration of H-1 status must make application with the Immigration Service before Dec. 31, 1978.

(Editor's Note: The following question-and-answer guideline was prepared for the information of the nurses who are benefited by the agreement reached between the INS and the NAPL-FNG on December 28, 1977. Mr. Seguritan, a New York attorney, was counsel for the nurses' alliance during the negotiations held in Washington, D.C. and New York).

**Who may be granted deferred voluntary departure status?**

Foreign nurse graduates who have lost their H-1 visa status due to their having failed the licensure examination or their having changed employer without INS authorization.

**May a nurse who did not take the first available licensure exam after arrival in the United States be allowed deferred voluntary departure status?**

No.

**Is the nurse required to have taken consecutively each such licensure exam administered since his/her arrival in the U.S.?**

Yes.

**Suppose a nurse meets all the above conditions but refuses to take the next licensure exam, may he/she be refused deferred voluntary departure status?**

Yes, because that would not be in line with the INS objective to afford the nurse further opportunity to take and pass the licensure exam.

**How may a nurse prove that he/she is taking the next licensure exam offered by the State?**

He/she may show evidence of registration for said exam, like acknowledgement of receipt of application by the State Board, receipt of payment or a cancelled check.

**Suppose a nurse's employment, say, in Florida, was terminated due to his/her failure in the exam, and said nurse now moves to Texas to work, may he/she be denied deferred voluntary departure?**

No.

**Suppose the nurse in Florida has still an unexpired H-1 visa, but he/she quits because of low wages and bad working conditions. The nurse moves to Texas to work without obtaining prior immigration authorization. Is he/she qualified for deferred voluntary departure?**

Yes. The agreement specifically states that a prior change of employer without INS authorization is not a disqualification. Moreover, the INS implicitly recognized during the negotiations that a change of employer due to exploitative working conditions is justifiable.

**Is the nurse required to apply for deferred voluntary departure status in the State where the H-1 visa was originally approved?**

No.

**Where may he/she apply for deferred voluntary departure status?**

He/she may apply with the Travel Control section of the Immigration Service of the district where he/she is working, or where he/she is residing.