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Changes in INS law simplified

Easily the most significant legislation affecting Filipinos in recent years is Public Law 97-116, also known as the Immigration and Nationality Act Amendments of 1981. Although it applies to alien physicians from all countries, the beneficiaries are actually Filipinos, who because of the oversubscribed Philippine visa numbers, have been in the United States for many years.

Essentially, the law classifies as special immigrant an alien, together with his accompanying spouse and children, who:

1) has graduated from a medical school or has qualified to practice medicine in a foreign state;

2) was fully and permanently licensed to practice medicine in a State on Jan. 9, 1978, and was practicing medicine in a State on that date;

3) entered the United States as a J or H nonimmigrant before Jan. 10, 1978; and

4) has been continuously present in the United States in the practice or study of medicine since the date of such entry.

Qualified applicants will obtain their immigrant visas without the usual quota restrictions. They will also be allowed to adjust their status in the United States even though they have been employed without authorization from the Immigration Service.

Following is a question-and-answer guideline on the new law:

1. Q. Suppose the alien physician arrived in the U.S. in 1974 as a tourist, but immediately changed his status to H-1, is he disqualified?

A. Yes, according to INS, because he did not physically enter the US under an H or J visa. (We believe, however, that the term "entered" is susceptible of different interpretation).

2. Q. Suppose the alien in the preceding question went home to the Philippines in 1976 and came back to the U.S. the same year with an H visa, is he eligible?

A. Yes.

3. Q. Is an H or J nonimmigrant who entered the United States before January 10, 1978, but obtained advance parole (because of his third preference petition) and went back to the Philippines for 60 days to visit his ailing mother, disqualified?

A. No, because of the advance

Filipino physicians major beneficiaries under new public law

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parole.

4. Q. If the alien physician was licensed in Washington D.C. in November 1977 but was undergoing medical training at that time in New York, where he was not licensed, is he practicing medicine in a State?

A. Yes. His medical training is considered as practice of medicine.

5. Q. Must the alien physician be the beneficiary of an approved third or sixth preference petition before he can apply under the new law?

A. No.

6. Q. Suppose the alien physician has an approved third preference petition and he applies under the new law but his application is disapproved, what happens to his third preference petition?

A. It will remain valid. And if his petition has a priority date earlier than Aug. 9, 1978, he may still be eligible for indefinite voluntary departure.

7. Q. Suppose the alien physician, whose special immigrant application is disapproved, has no approved third or sixth preference petition with a priority date before Aug. 9, 1978, may he be sent a notice of voluntary departure?

A. Yes.

8. Q. Suppose the alien physician meets all the

requirements of the law as above stated, but has not complied with the two-year foreign residence requirement to which he is subject to, is he eligible to apply?

A. No.

9. Q. Suppose he applies for special immigrant status but his application is denied for failure to comply with the foreign residence requirement, may he be sent a voluntary departure notice?

A. Yes, according to an Immigration Officer in New York.

10. Q. How does one know if an alien physician is subject to the two-year foreign residence requirement?

A. Usually this is indicated on the DSP-66 or IAP-66.

11. Q. Is the DSP-66 or IAP-66 conclusive as to the question of the two year foreign residence requirement?

A. No. The physician should seek legal assistance because it is still possible that he is not subject to the requirement.

12. Q. If one is subject to the two year foreign residence requirement, how does he obtain a waiver?

A. There are four ways, namely:

1) He may request a U.S. government agency to submit statement regarding the need for his services to the International Communication Agency (USIC). If the USICA approves the agency

request it will be forwarded to the Immigration Service, which will inform the alien of the final decision.

2) He may apply directly with the Immigration Service for a waiver on the ground that the enforcement of the requirement would impose exceptional hardship upon the exchange visitor's spouse or child (if such spouse or child is a citizen of the United States, or a lawful permanent resident thereof).

3) He may also apply directly with the Immigration Service on the ground that the alien is unable to return to his country of nationality, or last residence because he would be subject to persecution on account of race, religion or political opinion.

4) He may request his country of nationality or last legal permanent residence to issue a statement that it has no objection to the waiver of the requirement. This is not, however, available to those who were admitted as exchange visitors after January 10, 1977, or acquired such status after said date. It should be emphasized that "no objection statements" only initiate the request for a waiver and that it is the Immigration Service that makes the final determination.

13. Q. Suppose a Filipino physician complies with all the requirements of the law except that he entered the US as a tourist. He is not subject to the two year foreign residence requirement and he has an approved third preference petition with a priority date of say, July 22, 1978. Is there any possibility of his getting a green card within a short period of time?

A. Yes. Inasmuch as he is exempted from the visa qualifying exam, he can apply for sixth preference visa classification. If approved, the sixth preference will be entitled to the priority date of his third preference petition which is July 22, 1978. At the present, the State Department Visa Bulletin shows that visa numbers of for the Philippine sixth preference are being distributed if their priority date is July 22, 1978, or earlier. He may therefore file his application for adjustment of status, immediately.