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Q&A on new nursing law



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On December 18, 1989, President George Bush signed into law the Immigration Nursing Relief Act of 1989. Its approval shall pave the way for hundreds of nurses who have, before the law was approved, worked under a gloomy prospect of having to depart after a five-year work contract in the US. The law essentially qualifies a particular group of nurses to an adjustment of status from a nonimmigrant worker to permanent resident status, while at the same time tightening procedures for admitting new foreign nurses.

Since the new law will have considerable bearing on a sizeable block of Filipino professionals, specifically the nurses, the following is presented as a preliminary clarification of the general provisions pending the promulgation by the Attorney General of the specific regulations to carry out the law.

I am holding out on my analysis of this new law for next week when I resume my regular commentary under this column. In general, many longstanding questions remain unanswered and its essence only seek to solve a small part of the nurses problem, while aggravating another sore spot. Taken as a whole, the new law only comes up to be more a bane than a boon to the Filipino nurses.

There are still rough points in the law that need to be refined by the Attorney General. Meanwhile, it would be in the nurses' best interest to contact their own attorney about the specific questions they may have.

The new nurses' law directs its rules on essentially two fronts: the first is the adjustment of status for certain H-1 nurses to that of a permanent resident, and the second is an outline of new procedures for the admission of foreign nurses as temporary workers in the US.

The Immigration and Naturalization Service (INS) is not expected to start accepting applications until next spring.

Who may apply

1. Q. Who are eligible to apply?

A. Those who satisfy the following requisites:

a) They must have valid H-1 status as Registered Nurses (RNs) as of September 1, 1989 until the date of their application.

b) They must have been employed as RNs in the United States for at least three years; and

c) Their continued employment as RNs meets the labor certification standards under Sec. 212(a) (14) of the Immigration and Nationality Act.

2. Q. If an RN has been employed for less than three years, is she disqualified?

A. No, but she can apply only when she completes her third year.

3. Q. If an RN entered the US in 1986, but for some reason her H-1 visa expired before September 1, 1989, is she still eligible?

A. No, because she was not in a lawful status as of the date stated in the new law.

4. Q. Suppose she had a valid H-1 visa as of September 1, 1989 but said visa expired a month later, is she eligible to adjust her status?

A. No. Her visa must valid until the date of her application.

5. Q. A nurse entered the US in 1983 and has been working since then. Her H-1 visa will expire on December 31, 1989 and since she will then have completed her sixth year, she would not be eligible for another extension. Will she be eligible to apply under the new law?

A. Yes. Since the INS will not be ready to process application until after the Attorney General promulgates regulations to carry out the law, the new Act automatically considers RNs who find themselves in the situation described above, as having lawful status until the end of the 120-day period beginning on the date of the regulation.

6. Q. What is meant by meeting the labor certification standards?

A. The Secretary of Labor must determine that 1) there are not sufficient nurses who are able, willing, qualified and available at the time of the application for a visa and admission to the US and at the place where the nurse is to perform such skilled labor and; 2) her employment will not adversely affect the wages and working conditions of the nurses similarly employed.

7. Q. Does the law apply to the accompanying spouse and children of the nurse?

A. Yes.

Another way of obtaining green card

8. Q. If a nurse does not qualify, is there another way of obtaining permanent resident status?

A. Yes. She may file under the 3rd Preference or 6th Preference route.

9. Q. Will the new law result in longer waiting time for visa numbers for the 3rd & 6th Preferences?

A. No, because the qualified nurses will not be subject to quota restrictions. On the contrary, the movement of visa numbers will be faster as those qualified under the new law and are now on the waiting list will be taken out of the list once they adjust their status.

10. Q. If a nurse is eligible to file under the new law, is she precluded from seeking

permanent resident status under any other immigration provision?

A. No.

11. Q. Is there a time limit for filing under the law?

A. Yes. The nurse and her accompanying spouse and children must apply for such adjustment within the five-year period beginning on the date the Atty. General promulgates the required rules.

12. Q. If a nurse arrived in the US under an H-1 visa, say on August 1, 1989 is it advantageous for her to file for 3rd or 6th Preference?

A. Yes. She will establish an early priority date for the 6th & 3rd Preference petition and this will be useful in the event that her application under the new law is unsuccessful.

13. Q. May a nurse who has just arrived in the US file for a 3rd or 6th Preference visa classification even if she has not passed the RN exam but has a CGFNS certificate and an RN license from her home country?

A. Yes.

New non-immigrant classification

14. Q. What will be the new nonimmigrant visa designation for RNs?

A. H-1a

15. Q. Who qualifies for H-1a visa?

A. An alien who a) has obtained a full and unrestricted license to practice professional nursing in the country where she obtained her nursing education; b) has passed an examination recognized by the Health and Human Services (similar to the CGFNS) or has a license to practice in the State of intended employment; and c) is qualified to practice professional nursing at the state of intended employment immediately upon admission to the US and is authorized to be employed by the employing facility.

16. Q. How long will a nurse be allowed to work?

A. She will be given an initial period of three years with another extension of two years. Under extraordinary circumstances, she may be allowed another year.

Obligations of employer

17. Q. Is there any requirement for the employing facility to perform before it petitions a nurse for an H-1a visa?

A. Yes. The facility must file an attestation with the Department of Labor stating that 1) Substantial disruption of the facility's health care services will occur if the alien is not employed; 2) The employment of the alien will not adversely affect the wages and working conditions of nurses similarly employed; 3) The alien will be paid the wage rate for RNs similarly employed by the facility; 4) Either the facility has taken and is taking significant steps to recruit and retain sufficient RNs who are US citizens or immigrants in order to reduce or remove the facility's dependence on nonimmigrant RNs, or the facility is subject to an approved state plan for recruiting and retaining nurses; 5) There is no labor strike and the employment of the alien is not intended to influence election for bargaining representative; and 6) At the time an H-1a petition is filed, the RN union representative is notified or if there is no union, the notice is posted in the premises.

18. Q. Should an employer file an attestation every time it petitions a nurse?

A. No, because the attestation is valid for one year and is applicable to all H-1a petitions filed during that year

so long as there is continuous compliance.

Removal of US dependence on foreign RNs

19. Q. What would be considered as significant steps to recruit and retain local RNs?

Each of the following:

a) Operating or funding an RN training program.

b) Providing career development programs to aid health care workers in becoming RN's.

c) Paying RNs at wage rate higher than that prevailing in the geographic area.

d) Freeing RNs from non-nursing duties by providing adequate support service; and

e) Providing RNs reasonable opportunities for meaningful salary advances.

20. Q. What penalties may be imposed on the employer for committing

a misrepresentation or for failure to meet any of the conditions attested to?

A. The facility may be fined or may be required to pay backwages to the registered nurses affected. In addition, the H-1a petitions that it files during a period of one year shall not be approved.

21. Q. When will the new non-immigrant provisions of the law apply?

A. They shall apply to petitions filed only during the five year period beginning on the first day of the ninth month after the date of the enactment.