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Alien nurses may now seek permanent stay

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CROSS CURRENT

The much-awaited rules implementing the Immigration Nursing Relief Act of 1989 are now out. The relief act provides hundreds of qualified Filipino nurses the benefit of immediately adjusting their H-1 status to that of a lawful permanent resident.

Briefly, foreign nurses covered under this rule are those who satisfy these basic requirements: Valid H-1 visas as Registered Nurses (RNs) as of September 1, 1989 until date of the application; employment as RNs in the US for at least three years; and their continued employment as RNs meets the labor certification standard under Sec. 212(a)14 of the Immigration and Nationality Act.

These rules are interim; comments from various sectors may still be considered for final incorporation sometime after April 16, 1990. Meanwhile, as the rules took effect on March 16, 1990, qualified nurses are now encouraged to file their application. The earlier, the better.

Following is another set of question and answer guideline to explain the adjustment rules and procedures. The first set of question and answer outline which was a preliminary clarification of the law was printed in this newspaper last December 22-28. As these are technical rules, nurses should consult their individual attorneys about specific questions.

Q: What immigration forms should be filed?

A: They are:

1. ETA 750, (application for a blanket labor certification as a registered nurse).

2. I-140 or I-130 which is a preference immigrant visa petition.

3. I-485 (application for adjustment of status)

4. G-325A or biographic information

Q: Suppose the applicant already has an approved third preference or sixth preference petition, does she still need to submit Forms ETA 750 and I-140?

A: No. She will only have to submit the valid unexpired preference visa petition approval simultaneously with her application for adjustment of status.

Q: What documents go with the application?

A: An applicant must submit evidence of employment in the US for three years as a registered nurse while under an H-1 visa or any other valid nonimmigrant status. This evidence is to be in the form of letters from employers specifying the starting and ending dates of employment. She must also submit her RN license covering these periods of employment. This license may be temporary or permanent.

Q: Does working without INS authorization disqualify a nurse from applying?

A: Yes. This happens when an applicant moves to another employer without first obtaining INS approval or when an applicant works two jobs without INS authorization.

Q: What about if the applicant's visa expired at some point in time?

A: This will also disqualify her if at one point her I-94 expired and she failed to extend it. There are two exceptions to this rule, however: 1) If her being out of status was caused by the 5/6 year limitation imposed by the INS, but her H-1 was subsequently reinstated pursuant to Public Law 100-658 (The period allowed under this rule is the period from 1987 until the date of reinstatement); and 2) If she is a beneficiary of Public Law 100-658 but failed to maintain her status from December 31, 1989 to July 16, 1990.

Q: Can a qualified nurse obtain her immigrant visa in the Philippines, instead of in the US?

A: No. Because the law provides for adjustment of status not the issuance of immigrant visa.

Q: Are the spouse and children of an applicant also entitled to adjustment of status?

A: Yes, either concurrently or after the principal applicant. They should be in legal immigration status, not necessarily H-4 and should have maintained continuously a legal status since entry into the U.S. in accordance with Section 245 of the Immigration & Nationality Law. Also they should not have worked illegally.

Q: Suppose the spouse and children are outside the US, do they benefit?

A: While they cannot obtain their immigrant visa immediately, they are entitled to the priority date of the preference visa petition of the nurse applicant. Thus, if a nurse has previously applied for a preference visa petition and her priority date is August 1, 1986, the said dependents will be able to apply for an immigrant visa in the US embassy of their country once the August 1, 1986 priority date becomes current.

Q: For dependents not in the US, are they eligible for admission to the US as nonimmigrants to file for their adjustment of status to permanent residents?

A: No. Additionally, the INS will not use its parole authority to allow such individual entry into the US for this purpose.

Q: Is there a deadline for filing?

A: Yes, an application for adjustment of status (I-485) must be properly filed on or before March 15, 1995. For those who have already reached their 5/6 year H-1 limitation, they can no longer extend their visa beyond July 1990; therefore they must file on or before their expiration date.

Rule changes needed

As mentioned before, comments on these interim rules are still being entertained. Filipino nursing organizations can find some issues to raise here and should take this opportunity to send their comments on or before April 16, 1990, to the Director, Policy Directives and Naturalization Service, Room 2011, 425 I Street, N.W., Washington DC 20536. They may also write to their congressmen and senators.

Some of the rules here can prove oppressive for the nurses. An immigration publication, **The Interpreter Releases**, quoted a senior INS official as saying that most foreign nurses have probably at some point worked illegally. This fact may actually exclude many of these nurses otherwise qualified for the adjustment of status. Since an interviewing officer may not thoroughly check a nurse's background if she denies of having worked illegally throughout her stay in the US, many nurses who have once worked illegally may be encouraged to state otherwise. This particular guideline should be shelved lest the false statements of other nurses cast unecessary doubts and further restrictions on the honest ones as well.

The rule barring adjustment of status to those who failed to maintain their legal status should also be relaxed because this would effectively exclude a sizeable number of nurses who failed to reinstate their visa upon their expiration due to the confusion surrounding the five-six-year limitation.

Finally, dependents abroad should be allowed to get their immigrant visas immediately rather than wait for several years. The present rule will cause needless anxiety among family members as a result of prolonged separation.