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A Challenge to FGN Association Leaders

NO RELIEF ON NURSING RELIEF ACT

Law Deemed Restrictive and Prejudicial

BY REUBEN SEGURITAN, ESQ.

In December 1989, U.S. President Bush signed the Immigration Nursing Relief Act of 1989 into law. The main objective of this law was to grant a particular group of nurses adjustment of their status from a nonimmigrant worker to permanent resident status.

The impetus for this law was that there were approximately 10-15,000 foreign nurses on an H-1 visa in the U.S. who would have had to return to their home countries, having completed the maximum legal stay of 5 years. This would have left the U.S. 10-15,000 short of foreign educated but U.S. experienced nurses.

The signing of this law brought great relief and jubilation to the nurses affected and foreign nurses associations including the Philippine Nurses Association of America and the Filipino Nurses Organization, who lobbied for its passage, hailed the new law as well.

Now that the Attorney General's office have come up with promulgating rules and regulations to define the Immigration Nursing Relief Act of 1989, the relief has fizzled into a more restrictive and prejudicial as any an immigration law there was.

At a recent meeting called by Local 1199's League of Registered Nurses in New York, Mr. Lawrence Weinig, Deputy Assistant Commissioner of Adjudication of the Immigration and Naturalization Service outlined the major points of disqualification from the new law that would grant nurses instant green cards. First is the issue of unauthorized employment. Second is the lapse in their H1 visa caused by their inadvertence of failure to pass their first licensure examination.

Let's many nurses even think of finding a way to get around these, Weinig rushed to dash off a warning. In grim tones, he cautioned everyone of the "fatal" consequences of falsifying information or intentionally omitting a material fact. Both, he said, would constitute fraud and can jeopardize their 3rd or 6th preference immigrant visa petition.

Visibly confounded, the nurses echoed their objections among themselves. The terms, understandably become especially harsh because many of them, at one time or another, have either found employment elsewhere as part time or second jobs without INS authorization, while some others, having failed their exams, opted to stay put and work menial jobs to wait out the next licensure exam.

Many of the nursing candidates who could benefit the most from the new law are ironically the ones most affected by the harsh terms. These are the people who have been working in the U.S. longer than most and have already exceeded the five/six year limit of their H-1 working visas.

Many others who would have otherwise been qualified, except for their rendering of part-time service in response to other hospitals' call for staff aid, now cry their hearts out for a humanitarian folly that is costing them their green cards.

Mr. Weining is no ordinary immigration deputy. As the Deputy Assistant Commissioner of Adjudications, he is the top henchman whom every immigration lawyer rightly turns to for advise when in doubt. At the meeting of Local 1199, Mr. Weinig minced no words while proclaiming the grim forecast about half of the nurses who thought they qualify because they comply with the three-year employment requirement, will be disqualified on the basis of the conditions stated.

"We cannot change the law, we can only implement it", said Weinig, not at all apologetically. Aware of the harsh impact of the conditions on the nurses, Weinig conceded that he had come to throw the "wet blanket".

Nurses must not attempt to falsify any of their documents nor answer fraudulently during interviews. Dishonesty is ground enough for denial, he emphasized.

Nurses at the meeting certainly heard what they did not want nor expect to hear. As early as December, we pointed out the more unpalatable implication of the rule, cautioning nurses groups to hold off their celebration.

Among other things, we emphasized that the law was not designed to placate aggrieved foreign nurses or to favor them after their years of service. More than anything else, the nursing law pandered to the clawing greed of the nursing establishment and the big labor unions which portend a potentially collossus market given the crisis shortage for nurses.

As a result, the "benefit" attributed to qualified nurses amounts to just about that--fringe benefits, for which only a few selected ones get the bread, the rest get blown off by the wayside. Yet the "fringe benefit" does not make the privilege. The spirit and intent of the nursing act aims to throw some crumbs their way in order to "justify" other ominous clauses in it.

The other fact of the law, as pointed out before, outlines onerous procedures for employers recruiting foreign nurses. As if legislators of the rule have not heard of the shortage that has reached crisis proportion, the law requires employers to justify their recruitment, as well as go to lengths hiring local labor forces whose refusal to join the industry caused the crisis in the first place.

In reality, the new nursing relief act in its entirety above all intends to stifle the future entry of foreign nurses in the U.S. while it lures the local labor force into the industry with its new offer of more atractive package benefits.

Somewhere between America's interest to preserve its own labor force and the right of the Filipino nurses to obtain concessions for their years of service, lies unresolved conflicts that finds us again in the losing end. When America once found itself in a crisis situation, it looked out and saw in us an answer to its problems. Now that it believes it has found a semblance of a solution to the crisis, it finds ways to dump us, refusing those who have served to be part of the permanent solution.

When one country patently disregards the cause of one group of professional, once called to serve its infirm and diseased, there lies something for us to pay mind to. And when this same group becomes a target for unkind legislation, though it attempts to pay them some pitiful concessions, it is time our community actively react to the slight.

This is clearly a Filipino issue (ed's note: over 50% of foreign nurses in the U.S. are from the Philippines) and nobody else's. It is not a Chinese concern, nor the Blacks' nor Hispanics' nor any other minority's. Those affected are Filipinos, basically because of the comparatively longer waiting list of Filipino nurses awaiting permanent residency status. Thus we cannot expect anybody else standing on the

legal opinion

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Questions and Answers on Nursing Relief Act.

Who may apply

1. Who are eligible to apply?

Those who satisfty 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. If an RN has been employed for less than three years, is she disqualified?

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

3. 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?

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

4. 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?

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

5. 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?

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. What is meant by meeting the labor certification standards?

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

Yes.

Another way of obtaining green card

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

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

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

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.