

Questions, answers on new alien law

THE EMIGRATION ACT of 1990 was signed into law by President Bush last Nov. 29, 1990. Who are going to benefit from this law and how will it affect particularly, the most predominant professional group in the US, the Filipino nurses?

This interview cuts through the legalistic jargon by way of immigration lawyer Reuben S. Seguritan. While the final version is still being analyzed, what Mr. Seguritan had to say proved to be enlightening, less than optimistic and a bit disconcerting.

Tet Sta. Maria: Essentially, how would you describe the features of The Emigration Act of 1990?

Atty. Reuben Seguritan: This new law modifies the system of immigrant visa preferences and their numerical limitations. It also adds new categories of nonimmigrants and makes substantial changes to the existing nonimmigrant classification.

TM: How many immigrant visas does the law provide?

RS: For the fiscal year 1992-94, there will be 700,000 visas yearly available worldwide and this will decrease to 675,000 thereafter. This total will be distributed as follows: 465,000 family-sponsored and 140,000 employment-based. There are also transitional visas (good only for 1992-94) namely 55,000 for the spouses and children of legalized aliens and 40,000 for nationals of "adversely-affected countries."

Starting in 1995, the family visas will go up to 480,000 while the employment visas will remain at 140,000. The so-called diversity immigrant visas will be 55,000 yearly.



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TM: How will the present system of preferences be changed?

RS: Under the old law, there are four family-based preferences: *First Preference* -- for unmarried sons and daughters of US citizens; *Second Preference* -- for spouses and unmarried sons and daughters of permanent residence; *Fourth Preference* -- for married sons and daughters of American citizens; and *Fifth Preference* -- for brothers and sisters of US citizens. The new law will rearrange these four preferences, moving the 4th & 5th preferences (of the old law) to the 3rd and 4th preferences respectively, without changing the definitions.

With regard to employment-related immigrants, as you know, there are only two under the old law; the third preference which is for professional workers and persons of exceptional ability, and the sixth preference for the skilled and unskilled workers. Under the new law, the third and sixth preference categories will be replaced by five groups as follows:

The first group refers to the so-called priority workers composed of aliens with extraordinary ability, including outstanding professors and researchers, and certain executives and managers of mul-

tinational corporations.

The second group refers to the members of the professions with advanced degrees and aliens of exceptional ability.

The third group is for "other workers," namely skilled workers, professionals with bachelor's degree, and unskilled workers.

The fourth group will be the "special immigrants," like religious ministers, and the fifth group refers to aliens who have one million dollars to invest.

TM: Will Filipinos benefit from the transitional visas (spouses and children of legalized aliens) and the diversity immigrant visas (visas to countries with low admission rate into the US to encourage ethnic diversity)?

RS: Filipinos will benefit from the 55,000 transitional visas intended for the spouses and children of aliens legalized under the 1986 amnesty law. They will not, however, benefit from the other transitional category which gives 40,000 visas to nationals of adversely-affected countries (not including the Philippines), mostly Irish nationals currently in the US.

TM: Under the old law, the Philippines is entitled to about 20,000 visas annually. Will there be an increase under the new law?

RS: Yes. The Philippines will be entitled to about 25,000 yearly, 5000 more than under the old law.

TM: Immediate relatives under the old law are not numerically limited so that in the case of the Philippines, there have been more than 20,000 immigrants coming annually. In 1989 alone, there were 57,034 Filipino immigrants. Will this also be the case under the new law?

RS: Immediate relatives of US citizens (spouses, minor children and parents of US

citizens) will continue to be exempt from numerical limitation under the new law. The only difference however is that under the new law they will be included in the annual 700,000 visas and of their total number is less than 239,000, the difference will be added to the visas intended for the four-family-based preferences. If the number of immediate relatives, on the other hand, is more than 239,000, the number for the four family-based preferences will not be less than 226,000. This "floor" limit is necessary to avoid "squeezing" the family preferences.

Tet Sta. Maria: Will the new visa numbers represent a drastic increase? Will that mean that the waiting time will be shorter?

Reuben Seguritan: Actually less visa numbers are allotted to the first, 3rd and the 4th family preferences, under the new law. Under the old law, worldwide visa numbers for the first preference is 54,000 compared to only 23,400 under the new law. For married sons and daughters of US citizens, there are 27,000 visas compared to 23,400 under the new law. And for brothers and sisters, the new law is slightly higher (65,000) than under the old law (64,800). The outlook, therefore is not that good for those preferences. I'm afraid that the waiting line will be longer.

On the other hand, the second preference will get an increase from 70,200 to 114,200 visas yearly. This preference will also be subdivided into what has been called Family 2A (spouses and minor children of permanent residents) and Family 2B (adult sons & daughters of permanent resident aliens). Family 2A will get about 88,000 and Family 2B will get about 26,000.

The waiting time for spouses and minor children of permanent residents will therefore be considerably less. This is especially because the new per

country limit will not apply to 75 percent of this Family 2A category.

TM: *During the congressional debates, it appeared that a major goal of the new law was the facilitation of the entry of skilled workers and indeed more visa numbers are now allotted to employment-based applicants. Does this benefit the Filipinos?*

RS: Under the old law, there were only 54,000 visa numbers (worldwide) split between the 3rd and 6th preferences. This will increase to 140,000. A close look, however, will show that the beneficiaries of this visa facilitation will be the internationally acclaimed workers, outstanding professors, multinational executives and the millionaire investors. But how many Filipinos will qualify under this category? Many are outstanding, no doubt, but to American standards, are they? How many Filipinos have millions of dollars or are internationally acclaimed? The Filipino workers who apply for a visa are the average professionals -- the nurses, the teachers, engineers, accountants, computer professionals. These professionals fall under another category of which only 40,000 visas are available and they share these with unskilled workers. Note that out of these 40,000, only 10,000 will be allotted to unskilled workers. This means that Filipino live-in domestics, clerks and hospital aides will have a much longer waiting period.

TM: *Are you telling me that the Filipinos do not stand to benefit from this law except the addition of about 5,000 immigrant visa numbers, plus a handful of transitional visas?*

RS: Yes. Under the House measure, 50,000 visas for five years were provided to reduce the current backlogs in the second and fifth preference visa categories and this would have been a boon to Filipinos. But this was scuttled in the final

bill.

Even Filipino priests will suffer. They would be relegated to the non-immigrant category.

TM: *What about the non-immigrant Filipinos -- the H-1s (those with working permits), for instance?*

RS: As you know the country sends a sizeable number of H-1s every year -- nurses, medical technologists, physical therapists, teachers, computer specialists, etc. It will no longer be as easy. Look at what's happening to the H-1 nurses. Their employers are now required to submit labor attestations, which is a cumbersome procedure that require them to take great lengths to prove they need foreign recruits.

In the case of other professionals, now classified under H-1Bs, a worldwide limit of 65,000 a year will be imposed. You can therefore expect a waiting list for their non-immigrant visa category.

The only good thing about the new law as far as H-1s are concerned is the elimination of the presumption of immigrant intent. This is the doctrine of dual intent. This means that the filing of an immigrant visa petition will no longer be indicative of abandonment of one's foreign residence. This problem, as you may be aware, has been common among nationals of developing countries like the Philippines. Foreign consuls have held the discriminatory attitude that H-1s from those countries are less likely to return home. So that if the applicant has a pending immigrant petition by his parent or his employer, there is the possibility that an applicant may not be allowed to enter the US. This is common among Filipino nurses.

TM: *Speaking about nurses, what does the new law provide? The Filipino Nurses organization (FNO) worked to ensure provisions that would facilitate family reunification for nurses*

under the Nursing Relief Act and provide for the waiving of unauthorized employment as a bar to their green card. What happened to this?

RS: Congressman Schumer tried to correct what was clearly an oversight in the Nursing Relief Act but he was voted down on the first issue. As regards the unauthorized employment question, the amendment passed but the benefit would only accrue up to the date of enactment. So you should tell potential nursing applicants to get employment authorization for double jobs.

TM: *What will happen to the 3rd and 6th preference for these nurses?*

RS: I mentioned earlier the 3rd and 6th preference will be replaced by other categories. However, their visa eligibility with their corresponding priority date will be retained provided they file their new I-140 petition before Oct. 1, 1993.

For those nurses who have not filed for the 3rd and 6th preference, they should consider filing right away to acquire an early priority date. Now they are exempt from labor certification. Who knows if they will still be exempt under the new law.

TM: *What is the true value of the new law for Filipino veterans?*

RS: I realized the following on closer analysis: The beneficiaries are in their mid-seventies and eighties. They want to be citizens not so much for themselves as for their children. The law, however, does not provide for any pension benefits, not even for the automatic privilege of naturalizing their immediate next of kin. They will have to petition for them and go through the normal waiting process. This will take a long time, probably 10 years or more, as those children will come under the old 4th preference or the new 3rd preference. Also, there is

no US office or any US representatives who will process the applications; the veterans are all required to go to the US personally to file for their petitions and this entails a lot of money.

And then one has to remember that their petitions for their children automatically become invalidated when something happens to them.

All American has done is to hand them a piece of paper -- the naturalization certificate. Without the attendant privileges and benefits, they become simply second class US citizens.