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Nursing Deadlines

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The new immigration law has set important dates and deadlines for nurses to file or refile certain applications. These dates are approaching and this is a reminder to all Filipino nurses to take action before it's too late.

In summary, the law indicates the following:

1. Nurses who meet all the requirements of the Nursing Relief Act but have had immigration problems in the past have only until October 17, 1991 to file for the amnesty.

2. Effective the first of October 1991, it will be relatively easier for dependents of H-1 nurses to follow them to the US. Nurses who have to go back home to pick up their visas will also encounter less hassle and more assurance of being able to return to the US.

3. Nurses with approved 3rd or 6th preference visa petitions must refile between October 1, 1991 and October 1, 1993, in order for them to be included in the new preference categories as set by the new immigration law. They need not have to worry about losing their priority dates so long as they refile before the deadline.

AMNESTY

Nurses who have always been under "lawful status" need not worry about the October 17 deadline. This particular deadline applies only to nurses whose visas have at one time expired or those who have taken unauthorized employment.

Beyond that deadline, nurses whose visas have expired are no longer eligible for the amnesty. Also, nurses who have taken jobs without INS authorization after November 29, 1990 cannot adjust their status. Filing on or before the October 17, 1991 deadline forgives their unauthorized employment and visa lapses.

The new law amended the requirements for nurses eligible for the amnesty by allowing for a reprieve for nurses with problematic immigration past. The amended law now essentially requires that nurses can qualify for the amnesty for as long as they were in H-1 status as a nurse as of September 1, 1989.

Furthermore, they must be licensed RNs for at least three years before the filing of application. Since the amnesty law is in effect until March 15, 1995, recently licensed nurses can still qualify in three years when they would have met the three-year license condition.

The law as well applies to dependents (spouses and unmarried children under 21) of qualified nurses if they are already in the US. If they are outside the US, they must wait, as all the others, for the priority dates of the nurses' immigrant preference petition to become current.

An adjustment of status application-- from H-1 to immigrant status through the amnesty-- is filed in the same manner as any adjustment of status application. Properly filed Form I-485 (Application for Status as Permanent resident) must accompany required documents, one of them an approved immigrant preference petition.

If none has been filed upon application date, the immigrant preference petition (I-140) with the required Form ETA 750 A & B may be filed simultaneous with the I-485 together with other required documents upon application for the amnesty. The above-mentioned forms indicate that the RN intends to engage in the RN profession in subsequent years.

EASIER TO OBTAIN H-1 VISA

Until the Immigration Act of 1990, it was very difficult for nurses who had come home to the Philippines to return to the US. This was because H-1 nurse applicants had to overcome the statutory presumption of intending to become an immigrant. This was particularly difficult to overcome if the nurse had filed a 3rd or 6th Preference visa petition or had overstayed in the US while awaiting to be licensed.

The new law, however, does away with this harsh rule and makes it possible for nurses to seek immigrant status while complying with the terms of their nonimmigrant status.

The Immigration Act of 1990 recognized the difficulties encountered by nurses that led some of them to conceal their immigrant preference application or denying themselves needed vacation to their homeland during their entire stay.

The new law responded to these problems by removing the unabandoned foreign residence requirement and by eliminating the presumption of immigrant intent. It also expressly stated that the existence of a preference visa petition will not be a factor in the H-1 application.

In other words, visiting H-1 nurses in the Philippines with a pending 3rd or 6th preference petition can expect their petitions to be overlooked and not be used as ground for denial to return to the US. Overstaying in the US due to the delay in passing the licensure exam may not also be considered a valid ground for a denial to return to the US.

This new law will also benefit the spouses and unmarried children who intend to join the nurse in the US under an H-4 visa.

REFILING 3RD & 6TH PREFERENCES

As many of the nurses must have already known, effective October 1, 1991 also, the Preference Categories will be overhauled. The 3rd and 6th Preference categories under which nurses have been classified, will be replaced by a different employment-based preference.

Nurses who have pending 3rd and 6th preference petitions must refile their petitions in order to reclassify them under the appropriate preference categories. Though they may have to go through the trouble of refiling, they should not lose heart. Their priority dates will still be maintained, provided they file before October 1, 1993.

Unfortunately, the State Department has indicated that dependents of 3rd and 6th preference applicants who may wish to follow to join the principal aliens who have already immigrated may lose their derivative entitlements if they cannot make use of it before October 1, 1991. The remedy in such case is to be petitioned under the revised second preference category.