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Unexpected Boon for Filipino Professionals

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Major revisions to the immigration system as contained in the Immigration Act of 1990 took effect this month. Unfortunately, final implementing regulations have yet to come out. It is quite understandable therefore that confusion among aliens and even their attorneys followed with regards to filing for preferences under the new law.

Compounding the situation is the fact that pending bills aimed at correcting some unfair and burdensome provisions of the law are yet to be passed. One of these bills in fact was signed into law on October 1, 1991: the Armed Forces Immigration Adjustment Act. Despite its title, the law is significant to nurses, teachers, accountants, domestics and other workers because of technical amendments appended to it that provide for the automatic conversion of 3rd and 6th preference petition to the new preferences in the 1990 law.

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Unexpectedly benefitted were Filipinos who had 3rd preference petitions like nurses. Prior to October 1, the 3rd preference for the Philippines was backlogged to 1975. Under the October 1991 law, visa allocation for them will shoot up considerably.

By definition in the 1990 law, the old 3rd preference nurses should have been reclassified into the new employment-based 3rd preference under which skilled workers, entry-level professionals and unskilled workers are lumped together. Instead, they were reclassified into the new employment-based second preference category which is a new classification for professionals with advanced degrees and aliens of exceptional ability.

Aliens are cautioned to study the law carefully lest they be bypassed of benefits otherwise due them. Case follow-up is also advised because of the problems that normally ensue in the transition. For the benefit of the readers, we are simplifying them as follows:

1) 3rd and 6th preference petitions filed before October 1, 1991 are automatically converted to the new categories created by the Immigration Act of 1990, namely employment-based second preference and third preference, respectively.

2) Derivative status for spouses and children of old 3rd preference and 6th preference principals who have already become immigrants continue to be processed for immigrant visas even after October 1 when the new amendments to the preference categories became effective.

3) A new special immigrant classification is established for foreign nationals, including Filipinos, who have served in the US Armed Forces for at least 12 years.

4) The new rules relating to the implementation of provisions on O and P visas are delayed for 6 months. These visas refer to artists, entertainers, athletes and fashion models.

3RD & 6TH PREFERENCE

Any 3rd preference filed prior to October 1, 1991, and approved either prior or after said date will automatically be converted to the new employment-based second preference. Unlike what was provided for under the Immigration Act of 1990, the said petition need not be refiled or reapproved under the new amendment. However, entitlement to such 3rd preference status on the basis of such petition shall not apply more than 2 years after the date the priority date of the case has been reached for visa issuance. The same is true for a 6th preference petition. There is no need for refiling and such petition will automatically be converted to the new employment-based 3rd preference. Also, the two-year rule as to entitlement to said status as above described also applies.

Ostensibly, the Visa Office will not experience difficulty in allocating visa numbers for the new second preference and those documentarily qualified will probably start getting visa appointment schedules in November 1991.

Former 6th preference petitions will be more complicated however. This is because the 6th preference will be subdivided into the E3 preference and the EW ("other worker") preference. The distinction is crucial because E3 will be subject only to the overall preference limit of 40,000 per year, while the EW will be subject to the 10,000 "other worker" sublimit. The subdivision limit may cause considerable delays as to the allocation of visa numbers for EW beneficiaries.

Generally, in determining who are classified as E3 or EW will depend on the training and experience specified in the job requirement. If the job requires at least a bachelor's degree or two years of training and or experience the classification is E3. If the requirement is less, it is EW. If there is a doubt as to the new classification, the case will be referred to the State Department for an advisory opinion.

ACCOMPANYING SPOUSE AND CHILDREN

Prior to the October 1, 1991 amendment, if the principal alien became an immigrant under the 3rd and 6th preference but her dependents had not obtained their immigrant visas before October 1, 1991, the said dependents would have lost their derivative status. Under the new amendment, this will no longer be the case. The new amendment automatically entitles said dependents to derivative status in the new employment-based 2nd and 3rd preference, respectively, with the same priority dates as the principal.

Furthermore, dependents of the 6th preference principals are considered as spouses and children of E3 aliens and not subject to the 10,000 quota into which classification the principal alien would have been given.

SERVICE IN THE US ARMED FORCES

Effective 60 days after October 1, 1991, permanent residence can be granted to Filipinos and those from the Marshall Islands, Micronesia and Palau, who have served on active duty in the US Armed Forces after October 15, 1978 following enlistment outside the US under a treaty. Their spouse and children are also entitled to immigrant status.