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Alternatives for Nurses Who Fail the Exams

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The results of the Nursing Board Examinations have been released and as in past years, the failure rate is relatively high for Filipinos. There have been repeated appeals to change many culturally-biased questions which in most instances placed Filipino and other foreign nurses at a disadvantage, but such pleas have fallen on deaf ears.

Another reason for the high mortality rate is the policy of requiring nurses to take the first available nursing examination. This gives many of them, especially those who enter the US in time for the registration deadline, as short a time as less than three months to prepare for the review.

When an alien nurse fails the exam, hospitals can no longer employ her. Her visa, which is contingent on the effectivity of her temporary RN permit, automatically expires within a few days after the release of the results of the nursing exams. The anxiety of failure and unemployment can understandably be a harrowing experience, but this need not have to make her throw in the towel or feel she has reached the end of the rope. Not, at least, until she has explored other options to keep her from leaving the US and aiming for a second chance at the board exam.

The most feasible solution to this dilemma is for a nurse to change her visa from an H-1 to one of several categories. The advantage of this alternative is that a nurse, after having passed the exam on her second try, may be able to convert back to H-1 so that she may be able to resume her employment where she is accepted. Following are different non-immigrant options that a nurse might explore:

- A). Student Status (F-1): She may obtain F-1 status for review courses for the licensing examinations offered by schools such as the Stanly Kaplan Educational Centers.
- B). Training Status (H-3): As an H-3 trainee, a nurse is not allowed to engage in productive employment in hospitals. The petitioner who accommodates the nurse for training will be required to document that the nurse is otherwise fully qualified to engage in the training under the state licensure laws.
- C). Exchange Visitor (J-1): A J-1 visa is granted for a period not to exceed two years. Such a visa gives a nurse the advantage of allowing her spouse to work, upon application to the INS. However, to be granted a J-1 visa, the employer should have a J-1 program. The nurse should also weigh the consequences of the two year foreign residency requirement.
- D). Temporary Worker (H-2): For a nurse to obtain an H-2 temporary worker visa, she must have her employer convince INS of their temporary need of her. The "temporary intent" means that the employer only has a one-time need for her services, typically less than a year. Furthermore, an employer must obtain for the nurse a labor certification.
- E). Visitor Status, B-1/B-2: A nurse who converts to this status may be allowed to study and take the examination although she will be required to depart upon taking the examination unless some circumstances compel her to stay.

The aforementioned alternatives are worth consideration because when a nurse passes the exam at her second try, she may convert back to H-1 visa under certain circumstances. On the other hand, if she fails to convert to any of the options and choose to go underground or stay illegal, the next time an opportunity comes around, she can no longer change her status.

Bear in mind that though alternatives may be available to the nurse, there are restrictions as well as risks in converting one's visa to another. A nurse will be well-advised to seek counsel from her own lawyer.