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Modified Procedure for Nurses Filing Green Card Petition

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QUESTION: I am a nurse and I filed an immigrant visa petition under the new law. A month later, the petition form was sent back to me requiring my employer to notify its bargaining representative or post a notice about the employment. Has the procedure for getting a green card changed? Do nurses now have to go through the Labor Department before filing their petition with the Immigration Service?

ANSWER: The procedure under the Immigration Act of 1990 is slightly modified but nurses don't have to go through the cumbersome labor certification process. The new law retains professional nurses on Schedule A. This means that they are pre-certified by the Dept. of Labor because there are not sufficient American workers who are able, willing, qualified and available for the occupation of professional nurse.

The procedural change adds a requirement to notify either the employer's bargaining representative or the employer's employees about the filing of an application for permanent alien labor certification for the RN position. The notification must state that any person may provide documentary evidence bearing on the application to the local Employment Service and/or the regional certifying officer of the Department of Labor.

In applying for the employment-based immigrant visa for professional nurses, the following documents are required by the Immigration and Naturalization Service (INS):

Form I-140, Forms ETA 750 A and B in duplicate, CGFNS certificate and/or nursing license from state of intended employment, nursing diploma, transcript of record, nursing license in home country, other nursing licenses, letters from former employers, and other documents from prospective employer certifying to its ability to pay the wage stated.

There are two employment-based categories under which professional nurses can qualify: the second preference category and the third preference category. Professional nurses may qualify under the second preference if their Schedule A application demonstrates that the job requires a professional holding an advanced degree. An advanced degree may mean either a Master's degree or a baccalaureate degree followed by at least five years of progressive experience in the specialty. A nurse may also qualify under this category if her Schedule A can demonstrate that the job requires an alien of exceptional ability, a term to mean that her contributions will substantially benefit the United States educationally, culturally, or economically.

The employment-based third preference category is for both professionals and skilled workers (two years of education beyond secondary school).

Priority dates for employment-based visas are given when the complete petition package plus fee are received by the INS. Priority dates are maintained even if nurses change employers. Also, an old third preference nurse who qualifies later for the new employment-based second preference can still use her original 3rd preference priority date. The nurse who is the beneficiary of multiple petitions is entitled to the earliest priority date.

Old 3rd and 6th preference visa petitions filed before October 1, 1991 are automatically converted to the new employment-based 2nd and 3rd preference respectively. But in order to maintain their original priority dates, the nurses must either apply for an immigrant visa abroad or adjust their status in the US within two years after notification that an immigrant visa is immediately available. Please note, though, that under the 1990 law, the petitioner must file a new employment-based petition before October 1, 1993 in order to maintain their old priority dates.