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LEGAL NOTES

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Nurses must refile old petitions

The new nursing rule that took effect last month came two years late but it contains certain terms which nurses, particularly those who have yet obtained their permanent resident status, cannot ignore. The rule implements the Immigration Nursing Relief Act as well as other related legislations.

1. Third and sixth preference visa petitions that were filed prior to October 1, 1991 will become ineffective after October 1, 1993. Those 3rd and 6th preference petitions must therefore be refiled under the new law.

As noted in a previous column, the old 3rd and 6th preference petitions were since automatically converted to the current employment-based second and third preference respectively by the Armed Forces Immigration Adjustment Act of 1992. But at the same time, the law also specified that the converted petitions would continue to be effective for no more than two years after their priority date becomes current. Since visa numbers for all employment-based categories were current on October 1, 1991, their validity would lapse after October 1, 1993.

Nurses have until March 20, 1995 to file for Adjustment of Status under the Nursing Relief Act. To be qualified, however, they must have continuously maintained lawful non-immigrant status and should not have worked without INS authorization. The only excuse for not continuously maintaining lawful status is for such nurses to prove that it was through no fault of theirs and for some technical reasons as defined in the law.

Unauthorized employment, on the other hand, may be excused if it occured before November 29, 1990. Further, the new rule provides that unauthorized employment, which has been waived as a basis for ineligibility for adjustment of status, may not be used as a basis of a determination that the applicant is ineligible for adjustment of status due to failure to continuously maintain lawful non-immigranat status.

3. The three-year employment requirement of the Nursing Relief Act must have occured before, on or after the enactment of the said law and may have occured while the nurses were under certain visa status other than H-1. The employment also need not have been continuous.

If a letter or certification of employment cannot be presented as proof because the employer refuses to issue one or that the previous employer had gone out of business, alternate documentation like pay receipts combined with affidavits of co-workers may be acceptable.

4. Derivative family members abroad cannot avail of the benefits of the Nursing Relief Act. The law is that they must wait until the nurses' priority date becomes current. The Armed Forces immigration Adjustment Act of 1991 extended derivative status for spouses and children of 3rd and 6th preference immigrants who adjusted their status prior to October 1, 1991 and they will continue to receive said benefits after that date.