THE FILIPINO EXPRESS
November 6-12, 1995

H-1B Issues for Foreign Doctors

By Reuben S. Seguritan

International medical graduates (IMG) may qualify under an H-1B visa under two categories: clinical practitioner or academic physician.

The INS distinction between a clinical practitioner and an academic physician is stipulated in the requirements.

An applicant qualifies for a clinical practitioner if he possesses the following:

1. a state license or work authorization as required by the intended place of employment;

2. a full and unrestricted license to practice medicine in a foreign country or proof of graduation from a medical school;

3. proof of passing the Federal Licensing Examination (FLEX) or its equivalent; and

4. proof of passing the English language examination or graduation from an LCME accredited medical school.

An academic physician is exempted from the last two requirements on the basis of his involvement in education and research with incidental patient contact usually under a public or non-profit private educational research institution. In fact, a state license is not generally required for a teaching/research position involving no patient care. Physicians with national or international acclaim are also exempted from the last two requirements as well as foreign graduates of U.S. medical schools.

In some cases, some state licensing boards require evidence of employment authorization from the INS before issuing a medical license. This obviously creates problems. To remedy this, the physician must obtain a statement from the licensing board that he has satisfied all of the licensing requirements except the visa requirement.

Several issues have been raised with regards to the requirements. One issue concerns an opposition to a proposed amendment released by the INS on July 14, 1994 which would exclude graduate medical trainees from qualifying for an H-1B visa. Just because graduate medical trainees only perform clinical medicine as part of their training program, they cannot be categorized under a specialty occupation. This exclusion seems to contradict the criteria that were established for clinical medicine to qualify as a specialty occupation even if this was only performed within a training framework. Until now, action on this matter remains pending.

Another related issue concerning the practice of clinical medicine is the position held by physicians as faculty members in a medical program. Similarly, they cannot be considered under specialty occupation on the basis that performance of clinical procedure is only for training purposes. Their case becomes more complicated if their source of income is the university or the faculty professional association where they are affiliated. This would mean that the university or the association must file a separate LCA and H-1B petition for them.

Physicians who are affiliated with hospitals but cannot be considered as employees constitute another problem. Although they treat the hospital's patients, their status as independent practitioners disqualifies the hospital as their petitioner. Usually physicians pool resources together to form a corporation and become the H-1B petitioner themselves.

Complaints have also been made with regards to the requirement of passing the FLEX examination or its equivalent. This causes hardship on the physician especially during the transition period between the phase-out of the FLEX and the NBME exam and the establishment of the USMLE exam as the required exam. Can a physician satisfy this requirement by passing one part of one examination and combining it with another examination? While the states recognize test combinations, the INS requires a physician to pass a single test sequence.